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# TRANSCRIPT OF RECORD

Pet. 166 8579 U.S.S.C.

## Supreme Court of the United States

OCTOBER TERM, 1937

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## No. 715

JAMES M. WRIGHT, PETITIONER,

*vs.*

UNION CENTRAL LIFE INSURANCE COMPANY

---

## No. 716

JAMES M. WRIGHT, PETITIONER,

*vs.*

UNION CENTRAL LIFE INSURANCE COMPANY

---

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR CERTIORARI FILED JANUARY 19, 1938.

CERTIORARI GRANTED FEBRUARY 28, 1938.

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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1937

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JAMES M. WRIGHT, PETITIONER,

*vs.*

UNION CENTRAL LIFE INSURANCE COMPANY

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*vs.*

UNION CENTRAL LIFE INSURANCE COMPANY

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ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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1 IN THE DISTRICT COURT OF THE UNITED STATES, Placita.

Northern District of Indiana,

Fort Wayne Division.

## TRANSCRIPT ON SECOND APPEAL TO CIRCUIT COURT OF APPEALS.

Pleas And Proceedings had before the Honorable Thomas W. Slick, Judge of the District Court of the United States, for the Northern District of Indiana, at a term of said court, begun and held at the United States Court House in the City of Fort Wayne, Indiana, to-wit:

In the matter of
James M. Wright,
Debtor. } No. 2073 In Bankruptcy.

Be it remembered that heretofore, to wit: on the 23rd day of December, 1936, the above named debtor by his attorneys, Cook & Bailey, filed in the office of the Clerk of this court, his Application to Amend Schedules A-2 and B-1, which Application to Amend Schedules reads in the words and figures following, to-wit:

Dec. 23, 36. 2 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Indiana,

Fort Wayne Division.

In the Matter of
The Bankruptcy of James M. Wright. } No. 2073.

## APPLICATION TO AMEND SCHEDULES.

To the Hon. Thomas W. Slick, Judge of Said Court:

Comes now James M. Wright, Debtor in said Cause and asks the Court to grant him leave to amend his schedules A-2 and B-1 and respectfully represents to the Court:

That prior to the filing of his petition in bankruptcy he was the owner of and had conveyed part of his real estate covered by the mortgage of The Union Central Life Insurance Company to his son-in-law John E. Coon being the northeast quarter of the southeast quarter of Section 31, Township 24 north, of range 13 east, in Jay County, Indiana and the Southeast quarter of said quarter to his daughter Edna E. Coon; that he conveyed the southeast quarter of the southwest quarter of Section 31, said Township, County and State to his wife Emma G. Wright, and that he conveyed to his son, Walter C. Wright the north one-half of the northwest quarter of Section 4, Township 23 north of range 13 east, in said County and State. That each of said conveyances was without any money consideration. That all of his land made one farm and he continued to reside on said farm with said children and assisted in farming the same and received part of the rents and profits thereof. That on October 29, 1934, he filed his petition and schedules herein and set out all of said real estate and showed it was incumbered by said mortgage to said Life Insurance Company. That by virtue of his
3 liability on said mortgages he was interested in said real estate and had the right to redeem from the sale thereof on said mortgages.

That afterwards on April 13, 1935, said children conveyed all of said real estate back to him and he is still the owner thereof and was the owner of said real estate on October 11,

1935 when he filed his amended petition under Subsection (s) of the Act of August 28, 1935.

That a clerk in the office of the Conciliation Commissioner of Jay County, Indiana, made out his original petition and said Commissioner did not advise him to set out said facts as to his rights in said real estate and said matter was not explained in said schedules.

That by virtue of said original petition and schedules and said re-conveyances and his amended petition herein said real estate became assets in his estate in bankruptcy for the benefit of his creditors named in said schedules.

Wherefore he asks the Court to grant him leave and to allow him to amend said schedules to show the above facts and he files herewith said amended schedules.

4 James M. Wright.

Subscribed and sworn to before me this 21st day of December 1936.

My Commission expires May 29, 1938.

(Seal Homer E. Bailey,
*Notary Public.*

(Endorsed) Filed Dec. 23, 1936. Margaret Long, Clerk.

5 And now, on the same date, to-wit: December 23, 1936, the Debtor tenders his amended Schedules A-2 and B-1, which amended Schedules read in the words and figures following, to-wit:

Dec. 23, 36. 6

## Amended Schedule A-2.

### Creditors Holding Securities.

| Reference to Ledger or Voucher. | Names of Creditors. | Residences (If unknown, that fact must be stated). | Description of securities. | When & where debts were contracted. | Value of securities. | Amount of debts. |
|---|---|---|---|---|---|---|
| | | | | Portland, Ind. Oct. 1, 1925. | | |
| | The Union Central Life Insurance Company. | Cincinnati, Ohio. | Tract 1—W½ S. E. Sec. 31, Twp. 24 N. R. 13 E. Jay Co. Ind. 80 Acres. | | | |
| | | | Tract 2—E½ S. E. Sec. 31, Twp. 24 N. R. 13 E. said Co. and State. 80 acres. | | | |
| | | | Tract 3—S. E. S. W. Sec. 31, Twp. 24 N. R. 13 E, said County and State, 40 acres. | | $9000.00 | and interest. |
| | | | Tract 4—N½ N. W. Sec. 4, Twp. 23 N. R. 13 E. said County and State. 80.31 acres. | | $3000.00 | and interest. |

Explanation:—

That the debtor executed the mortgages to said Company covering all of said real estate. That when he filed said petition in Bankruptcy he owned said Tract 1. That prior to said petition he conveyed the north half of said tract 2 to his son-in-law, John E. Coon and the south half to his daughter, Edna E. Coon. That he conveyed tract 3 to his wife, Emma G. Wright. That he conveyed tract 4 to his son, Walter C. Wright. That each of said conveyances was without any money consideration. That all of said tracts were one farm and he remained in possession of said land, assisted in farming the same and received part of the rents and profits thereof. That by virtue of his liability on said mortgages the debtor was interested in said real estate and had the right to redeem from any sale of said land on said mortgages. That said children conveyed all of said land back to him

on April 13, 1935. That when he filed his amended petition under Subsection (s) of the Bankruptcy Act of August 28, 1935, his title had been completed and he was the owner in fee-simple of all of said real estate and is still the owner thereof. That by virtue of said first petition and said amended petition said land is a part of the assets of his estate in Bankruptcy named in said schedules.

Total, $12,000.00 and interest.

James M. Wright,
*Petitioner.*

7

Schedule A-2.

Accommodation Paper.

[N. B.—The dates of the notes or bills and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker or acceptors or endorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

| Reference to Ledger or Voucher. | Names of holders. | Residences. (If unknown, that fact must be stated.) | Names and residences of persons accommodated. | Places where contracted. | Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom. | Amount. |
|---|---|---|---|---|---|---|
| | | | | | Total, | |

.....

*Petitioner.*

Oath to Amended Schedule A-2.

United States of America,
Northern District of Indiana. } ss.

On this 21st day of December, A. D. 1936, before me personally came James M. Wright the person mentioned in and who subscribed to the foregoing Schedule A [2], and who be-

ing by me first duly sworn did declare the said Schedule to be a true statement of all his secured debts to The Union Central Life Insurance Company.

James M. Wright.

Subscribed and sworn to before me this 21st day of December, 1936.

My Commission expires May 29, 1938.

Homer E. Bailey,
*Notary Public.*
(Official Character)

(Seal)

8 Schedule B.—Statement of All Property of Bankrupt.
Amended Schedule B-1.

Real Estate.

| Location and Description of all real estate owned by Debtor, or held by him. | Incumbrances thereon, if any, and dates thereof. | Statement of particulars relating thereto. | Estimated Value. |
|---|---|---|---|
| Tract 1—W½ S. E. Sec. 31, Twp. 24 N. R. 13 E. Jay Co. Ind. 80 acres.<br>Tract 2—E½ S. E. Sec. 31 Twp. 24 N. R. 13 E. said Co. and State. 80 acres.<br>Tract 3—S. E. S. W. Sec. 31 Twp. 24 N. R. 13 E, said County and State. 40 acres.<br>Tract 4—N½ N. W. Sec. 4, Twp. 23 N. R. 13 E. said County and State. 80.31 acres. | Two mortgages to The Union Central Life Insurance Company, executed Oct. 1, 1925, in the principal sums of $9,000.00 and $3,000.00 with interest thereon. | | $ Cts.<br>$10,845.00 |

Note explanation on Amended Schedule A-2.
(Above)

Total, $10,845.00

James M. Wright,
*Petitioner.*

This schedule must be executed in triplicate.

9 Schedule B-6.

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reasons for their custody of the same.

Books.

Deeds.

Papers.

.....

*Petitioner.*

Oath to Amended Schedule B-1.

United States of America,
Northern District of Indiana, } ss.
County of Huntington.

On this 21st day of December, A. D. 1936 before me personally came James M. Wright the person mentioned in and who subscribed to the foregoing Amended Schedule B[1], and who being by me first duly sworn, did declare the said Schedule to be a statement of all his real estate mortgaged to The Union Central Life Insurance Company.

James M. Wright.

Subscribed and sworn to before me this 21st day of December, 1936.

My Commission expires May 29, 1938.

(Seal)

Homer E. Bailey,
*Notary Public.*
(Official Character)

10 (Endorsed) U. S. District Court * * (Caption—2073) * * Amended Schedules. Tendered Dec 23 1936. Margaret Long, Clerk U. S. District Court. Cook & Bailey, Attorneys for Bankrupt (P. O. Address) Huntington, Indiana.

Dec. 31, 36. 11 And afterwards, to-wit: on the 31st day of December, 1936, Debtor files Second Paragraph of Application to Amend Schedules, which second paragraph reads in the words and figures following, to-wit:

12 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

## SECOND PARAGRAPH OF APPLICATION TO AMEND SCHEDULES.

To the Hon. Thomas W. Slick, Judge of Said Court:

Comes now James M. Wright, Debtor in said Cause and for a second paragraph of application asks the Court to grant him leave to amend his schedules A-2 and B-1 and respectfully represents to the Court:

That prior to the filing of his petition in bankruptcy he was the owner of and had conveyed part of his real estate covered by the mortgage of the Union Central Life Insurance Company to his son-in-law John E. Coon being the northeast quarter of the southeast quarter of Section 31, Township 24 north, of range 13 east, in Jay County, Indiana and the southeast quarter of said quarter to his daughter, Edna E. Coon; that he conveyed the southeast quarter of the southwest quarter of section 31, said Township, County and State to his wife, Emma G. Wright, and that he conveyed to his son, Walter C. Wright the north one-half of the northwest quarter of section 4, township 23 north of range 13 east, in said county and state. That each of said conveyances was without any money consideration and was made subject to the mortgages of said Union Central Life Insurance Company. That all of his land made one farm and he continued to reside on said farm with said children and assisted in farming the same and received part of the rents and
13 profits thereof. That on October 29, 1934, he filed his petition and schedules herein and set out all of said real estate and showed it was incumbered by said mortgages to said Union Central Life Insurance Company which was approved by said Court and duly referred. That on May 27, 1935, said creditor recovered a personal judgment on said note against the debtor for the sum of $11,975.11 and a decree foreclosing said mortgage and a deficiency judgment over

against him and that afterwards said real estate was sold at sheriff's sale and bid in by said creditor for the amount of said judgment. That by virtue of his liability on said mortgages and on said judgment and decree he was interested in said real estate and had the right to redeem from the sale thereof on said mortgages and decree.

That before said judgment and decree on April 13, 1935, said children had conveyed all of said real estate back to him and he is still the owner thereof and was the owner of said real estate on October 11, 1935, when he filed his amended petition under Subsection (s) of the Act of August 28, 1935.

That a clerk in the office of the Conciliation Commissioner of Jay County, Indiana, made out his original petition and said Commissioner did not advise him to set out said facts as to his rights in said real estate and said matter was not explained in said schedules.

That by virtue of said original petition and schedules and said re-conveyances and his amended petition herein said real estate became assets in his estate in bankruptcy for the benefit of his creditors named in said schedules.

Wherefore he asks the Court to grant him leave and to allow him to amend said schedules to show the above facts and reinstate said real estate and he files herewith said amended schedules.

James M. Wright,
*Debtor.*

Subscribed and sworn to before me this 31st day of December 1936.

(Seal) Margaret Long,
*Clerk, U. S. District Court.*

Cook & Bailey,
*Attys.*

(Endorsed) Filed Dec. 31 1936. Margaret Long, Clerk. Entered Dec 1936.

14 And now the application of Debtor to Amend his Schedules A-2 and B-1 is denied by the Court, to which ruling of the Court the debtor at the time excepts.

25 And now the Debtor files Notice of Appeal, with proof of service endorsed thereon, which Notice and Proof of service read in the words and figures following, to wit:

Jan. 7, 37. 26 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

## NOTICE OF APPEAL FROM DECISION OF DISTRICT COURT.

Please take notice that James M. Wright, debtor and petitioner herein, has filed in the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, his petition for appeal and does hereby appeal from the order, decree and judgment of said District Court made and entered by the Hon. Thomas W. Slick, Judge of said Court and entered therein on the 31st day of December, 1936, denying the first and second paragraphs of application of Debtor to amend his Schedules, to the Circuit Court of Appeals for the Seventh Circuit to be held in and for said Circuit at the United States Court and Postoffice Building in the City of Chicago, Cook County, Illinois.

Dated this 7th day of January, 1937.

James M. Wright,
*Debtor.*

Samuel E. Cook,
*Counsel for Appellant.*

27 The undersigned, Roscoe D. Wheat, Attorney for the Union Central Life Insurance Company, hereby accepts service of the attached notice of appeal.

Dated this 8th day of January, 1937.

Roscoe D. Wheat,
*Attorney for Appellee.*

Endorsed: Filed Jan 7 1937 Margaret Long, Clerk.

And afterwards, to-wit: on the 7th day of January, 1937, the Debtor files Petition for appeal, which Petition for appeal reads in the words and figures following, to-wit:

15 IN THE DSTRICT COURT OF THE UNITED STATES. Filed Jan. 1937.
• • (Caption—2073) • •

## PETITION FOR APPEAL FROM DECISION OF DISTRICT COURT.

James M. Wright, the petitioner herein says he is aggrieved by the order, decision and judgment of said District Court made and entered in the above Cause on December 31, 1936, denying his first and second paragraphs of Application to amend his Schedules, and does hereby appeal from said order, decision and judgment to the United States Circuit Court of Appeals for the Seventh Circuit and prays that his appeal be allowed by this Court and that the transcript of the record and proceedings and papers upon which the said order and decision was made, duly authenticated may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated this 7th day of January, 1937.

James M. Wright,
*Debtor.*

Samuel E. Cook,
*Atty. for Appellant.*

16 And now the Debtor files assignment of errors, which assignment of errors is in the words and figures following, to-wit:

17 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—2073) • •

## ASSIGNMENT OF ERRORS.

Comes now James M. Wright, Appellant in said cause and makes and files the following assignment of errors upon which he will rely upon in the prosecution of his appeal from the decision denying his application to amend Schedules A-2 and B-1 of said District Court on December 31, 1936, and entered in said cause on said day, to-wit:

1. That said District Court erred in denying his application for leave to amend Schedules A-2 and B-1.
2. That said Court erred in denying the application for

leave to file Amended Schedules A-2 and B-1, in the form as tendered with and attached to said application.

3. That said application shows that said James M. Wright had conveyed said real estate without any consideration to his children and subject to the mortgage of said creditor (The Union Central Life Insurance Company). That the debtor remained in possession of said land, assisted in farming the same and received part of the rents; that he was still liable to pay said notes; that on April 13, 1935, said children conveyed said land back to the debtor; that on May 27, 1935, said creditor recovered a personal judgment against the debtor for the amount due on said loan and foreclosed said mort-
18 gage against him; that afterwards on October 11, 1935, said debtor filed his amended petition under Subsection (s) of the Bankruptcy Act of August 28, 1935; that by virtue of being liable on said loan and mortgage he was interested in said real estate and had the right to redeem from said sale; that he fully owned said land when said mortgage was foreclosed and on August 28, 1935, when said new Act was passed and on October 11, 1935, when he filed his amended petition under said Subsection (s); that he was and is entitled to the benefits of said Act and that said real estate became assets of said estate in bankruptcy for the benefit of his creditors other than said mortgagee. Hence, the Court erred in not granting him leave to amend said Schedules and leave to file the same and in not restoring and reinstating said real estate in said Schedules as part of the assets of said estate.

4. That said Court erred in holding that the debtor was not entitled to the benefits of the provisions of the amended Subsection (s) of Section 75 of the Bankruptcy Act of August 28, 1935.

5. That the Court erred in depriving the debtor of the benefits and relief granted in said amended Subsection (s) of August 28, 1935.

That in order that the foregoing assignment of error may be and appear of record the debtor presents the same to the Court and prays that such disposition be made thereof in accordance with law, the statutes and general orders in bankruptcy No. 11 of the United States in such case made and provided and said appellant prays that this Circuit Court of Appeals reverse and set aside in all things said decision and order of said District Court appealed from herein and to

order said Court to grant said application and the relief prayed for therein.

19

James M. Wright,
*Debtor.*

---

*Counsel for Appellant,*
Huntington, Indiana.

United States of America,
Northern District of Indiana,
County of Huntington.

James M. Wright, being duly sworn on his oath, says, That he is the debtor in the above cause and that the facts set out in the above assignment of errors are true in substance as he is informed and verily believes.

James M. Wright,
*Debtor.*

Subscribed and sworn to before me this 6th day of January, 1937.

My Commission expires May 29, 1938.

Homer E. Bailey,
*Notary Public.*

(Seal)

Samuel E. Cook,
*Counsel for Appellant.*

Endorsed: Filed Jan 7 1937 Margaret Long, Clerk.

20 And the Court now enters an order granting said Petition for Appeal, which order reads in the words and figures following, to-wit:

21 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

Entered Jan 1937.

## ORDER ALLOWING APPEAL.

On reading the petition of James M. Wright, dated January 7th, 1937, for appeal and consideration of the assignment of errors presented therewith, it is ordered that said appeal herein be allowed to the Circuit Court of Appeals for the Seventh Circuit as prayed for in said petition and the

Court orders that a certified transcript of the record and all proceedings in said cause be transmitted to the Clerk of this Court and to said Circuit Court of Appeals sitting at the Post Office Building in the City of Chicago, Illinois.

Dated January 7th, 1937.

Thos. W. Slick,
*Judge United States District Court for the Northern District of Indiana, Fort Wayne Division.*

Samuel E. Cook,
*Counsel for Appellant.*

31 And now the debtor files Showing as to Cost Bond in Appeal to Circuit Court of Appeals, which Showing reads in the words and figures following, to-wit: and is certified under the order of this Court (Pg. 21 above) granting the 2nd Appeals from said District Court to said Circuit Court of Appeals:

32 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

SHOWING AS TO COST BOND IN APPEALS TO CIRCUIT COURT OF APPEALS.

Comes now James M. Wright Appellant in said cause and shows to the Court that the action for the possession of the following real estate herein was tried in the Jay Circuit Court:

The north half of the northwest quarter of Section 4, Township 23 north, of range 13 east, in Jay County, Indiana.

That a term time appeal was taken by the debtor from the judgment in said cause to the Supreme Court of Indiana and a bond given which stays the execution of said judgment and said appeal is still pending in said Court.

That the action for the possession of the following part of said real estate herein was tried in the Adams Circuit Court:

The northeast quarter of the southeast quarter of Section 31, Township 24 north, of range 13 east, in Jay County, Indiana, and the southeast quarter of said quarter and the southeast quarter of the southwest quarter of said section.

That the defendants took a term time appeal from the

judgment in said cause to the Supreme Court of Indiana and gave a bond which stays the execution of said judgment.

That said James M. Wright has taken an appeal from the decision of the District Court dated December 14, 1936,
33 and an appeal from the decision of said Court dated December 31, 1936.

That the only liability in each of said appeals is the costs therein. That these costs will have to be advanced as the appeal progresses.

Wherefore he asks the Court to fix the cost bond in each of said appeals at $200.00.

That said sureties on said bond as to said first appeal are the owners of property which is worth more than $500.00 over and above her indebterness and obligations and exemptions and he tenders said bonds and asks the Court to examine and approve the same and said John E. Coon surety on said second appeal bond is worth more than $200.00 above his exemptions and indebtedness.

James M. Wright,
*Debtor.*

Subscribed and sworn to before me this 7th day of January, 1937.

Jane H. Allen,
*Dep. Clerk U. S. Dist. Court.*

(Seal)

Samuel E. Cook,
*Counsel for Appellant.*

Endorsed: Filed Jan 7 1937 Margaret Long, Clerk.

34 And afterwards, to-wit: on the 9th day of January, 1937, the Debtor files Cost Bond approved by the Court, which cost bond reads in the words and figures following, to-wit: and is certified under the order of this Court (Pg. 21 above) granting the 2nd Appeal from said District Court to said Circuit Court of Appeals: Filed Jan. 9, 1937.

35 Know All Men By These Presents:

That I, James M. Wright, Principal, the debtor in said Cause and Walter Wright and John Coon and Emily O. Sackett as sureties are held and firmly bound unto The Union Central Life Insurance Company, the creditor in said Cause, in the sum of Two Hundred Dollars of lawful money of the United States for the payment of which well and truly to be

made we bind ourselves and our representatives jointly and severally by these presents.

Witness our Hands this 6th day of January, 1937.

Whereas, said James M. Wright has filed his petition in said Court for an appeal from the decision and order of said Court on December 31, 1936, denying his application to amend Schedules A-2 and B-1 in said cause to the Circuit Court of Appeals of the Seventh Circuit.

Now, therefore, the condition of the above obligation is such that if said James M. Wright shall prosecute his appeal to effect and answer all costs and damages, if he fails to make his plea good, then this obligation shall be null and void; otherwise to be and remain in full force and effect in law.

Witness our Hands and Seals this 6th day of January, 1937.

James M. Wright,
Walter Wright,
John Coon,
Emily O. Sackett.

Tendered to the Judge of said Court this 7th day of January, 1937.

Samuel E. Cook,
*Atty. for Appellant.*

Examined and approved this 9th day of January, 1937.

Thos. W. Slick,
*Judge District Court.*

28 And now the Debtor files Petition to Enlarge Time for Filing Transcript on Appeal to Circuit Court of Appeals, and the Court now enters an order granting said Petition and enlarging the time as prayed for, which Petition and Order read in the words and figures following, to-wit:

29 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

PETITION TO ENLARGE TIME FOR FILING TRANSCRIPT ON APPEAL TO CIRCUIT COURT OF APPEALS.

To the Hon. Thomas W. Slick, Judge of Said Court:

Comes now James M. Wright, the Appellant in said Cause and respectfully represents to the Court:

That this Court on December 23, 1936, allowed him an

appeal to the Circuit Court of Appeals for the Seventh Circuit.

That he filed his praecipe on December 31, 1936, in the office of the Clerk in the Fort Wayne Division at Fort Wayne, Indiana, for the preparation and certification of a transcript of the record in this cause to said Circuit Court of Appeals.

That in the citation filed herein the Court fixed January 30, 1937, as the return day in said Appeal.

That on account of the press of public business in the office of said Clerk in said District and Division, it will be impossible for said Clerk and Deputies to prepare said transcript of the proceedings in said cause for Appeal in time to file the same by said return day.

Wherefore the Appellant prays that the Court enlarge the time for filing said transcript of the record and copies of the praecipe with the Clerk of said Court of Appeals until February 20, 1937.

James M. Wright.

Subscribed and sworn to before me this 7th day of January, 1937.

Margaret Long,
Margaret Long,
(Sea) *Clerk.*

30 Samuel E. Cook.
*Counsel for Appellant.*

The above statement is correct. This 7th day of January, 1937. Entered Jan 1937.

Attest:
Margaret Long,
(Seal) *Clerk District Court.*

The above petition is granted and the time to file said transcript is enlarged as prayed for to February 20, 1937.

Done this 7th day of January, 1937.

Thos. W. Slick,
*Judge District Court.*

Endorsed: Filed Jan 7 1937 Margaret Long, Clerk.

36 And afterwards, to-wit: on the 13th day of January, 1937, Debtor files Praecipe for Record on Appeal, together with proof of service endorsed thereon, which Praecipe and Proof of Service, read in the words and figures following, to-wit:

d Jan. 13, 937.

37 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

PRAECIPE FOR RECORD ON APPEAL.

To the Clerk of the District Court of the United States for the Northern District of Indiana, Fort Wayne Division:

Please prepare and certify forthwith a transcript of the following records in the above entitled cause on appeal, to the United States Circuit Court of Appeals for the seventh Circuit:

1. Debtor's application to amend Schedules A-2 and B-1.
2. Debtor's amended Schedules A-2 and B-1.
3. Second paragraph of Application to amend Schedules.
4. Order of Judge of this Court denying Debtor's Application to amend Schedules A-2 and B-1 and exception granted to the debtor.
5. Petition for appeal filed by James M. Wright.
6. Assignment of errors filed by James M. Wright.
7. Order allowing the appeal.
8. The following original documents shall be transmitted with the transcript, to-wit:

(a) The original citation on appeal, with proof of service endorsed thereon.

(b) The original notice of appeal, with proof of service endorsed thereon.

38 (c) Copy of praecipe for record on appeal filed by James M. Wright with proof of service endorsed thereon.

9. Also, petition and order enlarging the time for filing the transcript.

James M. Wright,
*Debtor, by His Attorney.*

Samuel E. Cook,
*Attorney for Appellant.*

The undersigned Attorney of record for said creditor hereby accepts service of the above Praecipe for record on appeal and the receipt of a copy thereof.
This 13 day of January, 1937.

Roscoe D. Wheat,
*Attorney for Appellee.*

Endorsed: Filed Jan. 13, 1937, Margaret Long, Clerk.

39 United States of America
Northern District of Indiana } ss:

I, Margaret Long, Clerk of the United States District Court in and for the Northern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of the original orders and pleadings, as follows, to-wit:

Debtor's application to amend Schedules A-2 and B-1.

Debtor's amended Schedules A-2 and B-1.

Second paragraph of Application to amend Schedules.

Order of Judge of this Court denying Debtor's Application to Amend Schedules A-2 and B-1 and exception granted to the debtor.

Petition for appeal filed by James M. Wright.

Assignment of errors filed by James M. Wright.

Order allowing the appeal.

The original citation on appeal, with proof of service endorsed thereon.

The original notice of appeal, with proof of service endorsed thereon.

The original praecipe for record on appeal filed by James M. Wright with proof of service endorsed thereon.

Petition and order enlarging the time for filing the transcript.

Showing as to Cost Bond in Appeal to Circuit Court of Appeals.

Cost Bond and approval of Court.

said papers now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Fort Wayne, Indiana, this 15th day of February, A. D. 1937.

Margaret Long,
(Seal) *Clerk United States District Court for the Northern District of Indiana,*
By Jane H. Allen,
*Deputy Clerk.*

22 And now the Debtor files Citation on appeal, with proof of service endorsed thereon, which Citation and proof of service read in the words and figures following, to-wit:

23 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

## CITATION.

By the Honorable Thomas W. Slick, United States District Judge for the Northern District of Indiana.

To the Union Central Life Insurance Company:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Seventh Circuit, to be held at the City of Chicago, in the County of Cook, in the State of Illinois, on the 30th day of January, 1937, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Indiana, wherein James M. Wright, Debtor, is Appellant and you are Appellee, to show cause, if any there be, why the order entered in said cause mentioned, on the 31st day of December, 1936, should not be reversed and corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at Fort Wayne, in the State of Indiana, in the District and Circuit above named this 7th day of January, 1937, in the year of our Lord One Thousand Nine Hundred and Thirty-seven, and of the Independence of the United States One Hundred and Sixty first.

January 7, 1937.

Thos. W. Slick,
*United States District Judge.*

Attest:
Margaret Long,
*Clerk.*

24 The undersigned Attorney of record for said creditor hereby accepts service of the attached citation on appeal and the receipt of a copy thereof.

This 8 day of January, 1937.

Roscoe D. Wheat,
*Counsel for Appellee.*

Samuel E. Cook,
*Counsel for Appellant.*

Endorsed: Filed Jan. 7, 1937, Margaret Long, Clerk.

[fol. 1]

**IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, FORT WAYNE DIVISION**

TRANSCRIPT ON FIRST APPEAL TO CIRCUIT COURT OF APPEALS

Pleas and Proceedings had before the Honorable Thomas W. Slick, Judge of the District Court of the United States, for the Northern District of Indiana, at a term of said Court, begun and held at the United States Court House in the City of Fort Wayne, Indiana, to-wit:

In Bankruptcy. No. 2073

In the Matter of JAMES M. WRIGHT, Debtor

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[fol. 2] IN UNITED STATES DISTRICT COURT

Cause No. 2073

In the Matter of JAMES M. WRIGHT, Bankrupt

MOTION BY THE UNION CENTRAL LIFE INSURANCE COMPANY, for an Order to Strike Certain Real Estate from the Schedule and Inventory and Appraisement Filed in This Matter and an Order Against the Conciliation Commissioner Withdrawing Said Real Estate from His Jurisdiction and Control and an Order Against the Receiver Appointed by the Conciliation Commissioner Setting Aside and Vacating Any Leases or Contracts Entered Into by Him in Relation to Said Real Estate.—Filed July 29, 1936.

To the Hon. Thomas W. Slick, Judge, United States District Court:

Your petitioner, The Union Central Life Insurance Company, respectfully shows that on the 1st day of October, 1925, the bankrupt, James M. Wright, was the owner in fee simple of the following described real estate in Jay County, Indiana, to-wit:

The southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing One Hundred Sixty acres, more or less.

Also, the southeast quarter of the southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres, more or less.

Containing in both the above described tracts two hundred (200) acres, more or less.

That on said 1st day of October, 1925, to secure the payment of a note in the sum of $9,000.00, which was payable to this petitioner, the said James M. Wright and Emma G. Wright, his wife, executed and delivered to this petitioner their mortgage on said real estate, which mortgage was duly recorded in the office of the Recorder of Jay County, Indiana, on October 26, 1925, in Mortgage Record No. 43 at page 415.

That the said James M. Wright was also the owner of the [fol. 3] following described real estate in Jay County, Indiana, to-wit:

The North half of the northwest quarter of Section Four (4), Township Twenty-three (23) North, Range Thirteen (13) East, containing Eighty and thirty one hundredths (80.31) acres, more or less.

and that this petitioner held a mortgage lien on said real estate to secure the payment of a note calling for $3,000.00, which note and mortgage was executed by James M. Wright and wife.

That on the 14th day of October, 1931, the said James M. Wright and Emma G. Wright, his wife, executed and delivered a warranty deed to Walter C. Wright for the following described real estate in Jay County, Indiana, to-wit:

The North half of the Northwest quarter of Section Four (4), Township Twenty-three (23) North, Range Thirteen (13) East, containing eighty and thirty one hundredths (80.31) acres, more or less.

That said deed was filed for record in the office of the Recorder of Jay County, Indiana, on the 14th day of October, 1931, and was duly recorded in Deed Record No. 80 at page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "A".

That on the 14th day of October, 1931, the said James M. Wright and Emma G. Wright, his wife, executed a warranty deed to Edna E. Coon to the following described real estate in Jay County, Indiana, to-wit:

The Southeast quarter of the southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing forty (40) acres.

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on the 14th day of October, 1931, and was recorded in Deed Record No. 80 at page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "B".

That on the 14th day of October, 1931, James M. Wright and Emma G. Wright, his wife, executed a warranty deed to John E. Coon for the following described real estate in [fol. 4] Jay County, Indiana, to-wit:

The Northeast quarter of the Southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres,

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on October 14, 1931, and recorded in Deed Record No. 80 at page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "C".

That on the 14th day of October, 1931, James M. Wright executed a warranty deed to Emma G. Wright, his wife, for the following described real estate in Jay County, Indiana, to-wit:

The Southeast quarter of the Southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres.

which deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on the 25th day of February, 1932, and recorded in Deed Record No. 80 at page 216 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "D".

That prior to October 30, 1934, this petitioner filed its complaint in Jay Circuit Court, Jay County, Indiana, against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright and Citizens Bank of Portland,

Indiana, for a personal judgment against James M. Wright and foreclosure of the mortgage executed by him as above set out in this petition and that said cause was venued from Jay County to Adams County, Indiana, and that while said action was pending and on said 30th day of October, 1934, the said James M. Wright filed his petition in bankruptcy under the Frazier-Lemke act; that the said James M. Wright filed a schedule of his property and included therein and in said schedule inventoried the above described real estate and made affidavit and oath that he was the owner of the same when in truth and in fact, he was not the owner of said real estate but had sold and conveyed the same as shown by Exhibits "A", "B", "C" and "D" filed herewith. [fol. 5] That long after the filing of said petition in bankruptcy by the said James M. Wright, to-wit: on the 13th day of April, 1935, Walter C. Wright and Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered a quit-claim deed to James M. Wright, for the following described real estate in Jay County, Indiana, to-wit:

The North one half (½) of the northwest quarter (½) of Section Four (4), Township Twenty-three (23) North, Range Thirteen (13) East, and the East one half (½) of the southeast quarter (¼) of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East.

Also the south half of the east half of the southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing 40 acres, more or less.

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on the 13th day of April, 1935, and Recorded in Deed Record No. 82 at page 38 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "E".

That on the 27th day of May, 1935, The Union Central Life Insurance Company secured a personal judgment against James M. Wright in the Adams Circuit Court in the sum of $11,975.11 and that foreclosure of its mortgage securing the same, which mortgage covers the two hundred acre tract of land above described in Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, and an order of foreclosure against this bankrupt, James M. Wright, and Walter C. Wright, Edna E.

Coon and John E. Coon, and the court ordered that a certified copy of said judgment be issued to the Sheriff of Jay County, Indiana, and that he sell said real estate as on execution; that the record shows that Emma G. Wright, the wife of James M. Wright, was deceased and that James M. Wright, Edna E. Coon and Walter C. Wright were her heirs at law.

That the sheriff of Jay County, Indiana, received a certified copy of said judgment, decree and order of sale and advertised said real estate for sale as required by the laws of the State of Indiana and advertised that said real estate [fol. 6] would be sold at the east door of the court house, Portland, Indiana, on the 20th day of July, 1935, and that on said 20th day of July, 1935, the sheriff did offer the real estate for sale at public auction and The Union Central Life Insurance Company bid the sum of $12,174.31 for the fee simple title of said real estate and that being the highest and best bid the said two hundred acres of land was struck off and sold to The Union Central Life Insurance Company and it having paid the amount of its bid, the sheriff executed and delivered to it a sheriff's certificate of sale and the year of redemption having expired and no one having redeemed said real estate, and The Union Central Life Insurance Company having retained possession and ownership of said sheriff's certificate of sale did on the 20th day of July, 1936, present said certificate of sale to the sheriff of Jay County, Indiana, and demanded a deed for said real estate and Tandy Ferguson, Sheriff of Jay County, Indiana, did on the 20th day of July, 1936, execute and deliver to The Union Central Life Insurance Company a sheriff's deed for said real estate, which deed was filed for record in the office of the Recorder of Jay County, Indiana, and recorded on the 20th day of July, 1936, in Deed Record No. — at page — and a copy of said deed is filed herewith, made a part hereof, and marked Exhibit "F".

That by reason of the deeds of James M. Wright, being Exhibits "A", "B", "C" and "D" and by reason of the foreclosure of the mortgage executed by him and the sale of said real estate and his failure to redeem said real estate, the said James M. Wright, bankrupt, has no right, title or interest in and to said real estate nor is there any equity therein for his creditors and that The Union Central Life Insurance Company is now the absolute owner of said real estate and entitled to the possession thereof and entitled to

have its title thereto cleared and quieted as to James M. Wright and his creditors.

[fol. 7] That this bankruptcy proceedings was referred to Hon. Bryon G. Jenkins, conciliation commissioner, and the said conciliation commissioner appointed one Carmen Alexander as receiver of said real estate and the said Carmen Alexander has entered into a lease contract which involves said real estate and the title thereto and the controls of said conciliation commissioner and that of Carmen Alexander as receiver, should be set aside and vacated and any contract entered into by said receiver in relation to said real estate should be set aside, vacated and declared at naught.

That notice has been served upon James M. Wright, Edna E. Coon, John E. Coon, Walter C. Wright, Byron G. Jenkins and Carmen Alexander that this petition will be presented and filed with the referee in bankruptcy and proof of the service of said notice is filed herewith.

Wherefore, your petitioner moves the court for an order striking out and removing from the schedule filed in this cause and the inventories and appraisements filed in this cause the real estate above described and removing the same as any part of the assets claimed by said bankrupt and that the said Hon. Byron G. Jenkins, conciliation commissioner, be ordered and directed to remove and release said real estate from any claim of jurisdiction on his part and that the said Carmen Alexander, as receiver, appointed by the conciliation commissioner, be ordered to release his jurisdiction, if any, over said real estate and to cancel any and all contracts entered into by him in relation thereto and for all other proper relief.

The Union Central Life Insurance Company, by Roscoe D. Wheat, its attorney.

[fol. 8] *Duly sworn to by Roscoe D. Wheat. Jurat omitted in printing.*

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[fol. 9] EXHIBIT "A" TO MOTION

No. 9300

James M. Wright et ux to Walter C. Wright:

This Indenture Witnesseth, That James M. Wright and Emma G. Wright, his wife, of Jay County, in the State of

Indiana convey and Warrant to Walter C. Wright, of Jay County, in the State of Indiana, for and in consideration of One dollar ($1.00) and other valuable considerations, the receipt where of is hereby acknowledged, the following described Real Estate in Jay County in the State of Indiana, to wit:

The north half of the northwest quarter of section four (4) township twenty three (23) north, range thirteen (13) east, containing eighty and thirty one hundredths acres (80.31) more or less;

Subject to a mortgage of $3000.00, given by the grantors herein to The Union Central Life Insurance Company (Mortgage Record 43, page 416).

In Witness Whereof, the said James M. Wright and Emma G. Wright, his wife, have hereunto set their hands and seals, this 14th day of Oct. 1931.

Emma G. Wright. (Seal.) James M. Wright. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said county and State, this 14th day of October, A. D. 1931, personally appeared the within named James M. Wright and Emma G. Wright, his wife, grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed, for the uses and purposes herein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

M. M. Mellinger, Notary Public. My commission expires Sept. 4, 1932, (L. S.)

Filed Oct. 14, 1931, at 3:30 P. M.

Jessie B. Humphries, R. J. C.

[fol. 10] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, and State of Indiana, hereby certify the above and foregoing to be a full, true, correct and complete copy of the record of a Deed James M. Wright (et ux) to Walter C. Wright, filed and recorded on the 14th day of October, 1931, in Deed Rec-

ord No. 80 at page 83 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder, this 14th day of July, 1936.

Daisy B. Heller, Recorder Jay County. (Seal.)

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[fol. 11] EXHIBIT "B" TO MOTION

This Indenture Witnesseth, That James M. Wright and Emma G. Wright, his wife, of Jay County, in the State of Indiana, for and in consideration of One Dollar ($1.00) and other considerations, Dollars, the receipt whereof is hereby acknowledged, the following described Real Estate in Jay in the State of Indiana, to-wit:

Convey and Warrant to Edna E. Coon of Jay County, in the State of Indiana The Southeast Quarter of the southeast Quarter of Section thirty one (31), Township twenty four (24) north, range thirteen (13) east, containing forty (40) acres, more or less.

Subject to a mortgage indebtedness of $2500.00 of a certain mortgage given by the grantors herein to The Union Central Life Insurance Company, calling for $9000.00, Mortgage Record 43, page 415;

In Witness Whereof, the said James M. Wright and Emma G. Wright, his wife, have hereunto set their hands and seals, this 14th day of October, 1931.

Emma G. Wright. (Seal.) James M. Wright. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 14th day of October, A. D. 1931, personally appeared the within named James M. Wright and Emma G. Wright, his wife, grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed, for the uses and purposes herein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

M. M. Mellinger, Notary Public. My commission expires Sept. 4, 1932. (L. S.)

Filed October 14, 1931 at 3:30 P. M.

Jessie Hurphries R. J. C.

[fol. 12] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, State of Indiana, hereby certify the above and foregoing to be a full, true, correct and complete copy of the record of a Deed James M. Wright (et ux) To Edna E. Coon, filed and recorded on the 14th day of October, 1931, in Deed Record No. 80 at page 83 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder this 14th day of July, 1936.

Daisy B. Heller, Recorder of Jay County. (Seal.)

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[fol. 13] EXHIBIT "C" TO MOTION

No. 9302

James M. Wright et ux to John E. Coon:

This Indenture Witnesseth, That James M. Wright and Emma G. Wright, his wife, of Jay County, in the State of Indiana, Convey and Warrant to John E. Coon of Jay County, in the State of Indiana for and in consideration of One Dollar ($1.00) and other considerations the receipt whereof is hereby acknowledged the following described Real Estate in Jay County in the State of Indiana, to wit:

The northeast quarter of the Southeast quarter of section thirty—(31), township twenty four (24) north, range thirteen (13) east, containing forty (40) acres more or less.

Subject to a mortgage indebtedness of $1500.00, of a mortgage indebtedness to The Union Central Life Insurance Company of $9000.00 (Mortgage Record 43, page 415).

In Witness Whereof, the said James M. Wright and Emma G. Wright, his wife, have hereunto set their hands and seals, this 14th day of October, 1931.

Emma G. Wright. (Seal.) James M. Wright. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 14th day of October, A. D. 1931,

personally appeared the within named James M. Wright and Emma G. Wright, his wife, Grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed, for the uses and purposes herein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

M. M. Mellinger, Notary Public. My commission expires Sept. 4, 1932. (L. S.)

Filed October 14, 1931, at 3:30 P. M.

Jessie B. Humphries R. J. C.

[fol. 14] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, State of Indiana, hereby certify the above and foregoing to be a full, true, correct and complete copy of the record of a Deed James M. Wright (et ux) to John E. Coon, filed and recorded on the 14th day of October, 1931, in Deed Record No. 80 at page 83 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder, this 14th day of July, 1936.

Daisy B. Heller, Recorder, Jay County. (Seal.)

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[fol. 15] EXHIBIT "D" TO MOTION

No. 10343

James M. Wright to Emma G. Wright:

This Indenture Witnesseth, That James M. Wright of Jay County, in the State of Indiana Convey and Warrant to Emma G. Wright, the wife of the grantor, herein of Jay County, in the State of Indiana, for and in consideration of One Dollar ($1.00) and other considerations of Value, Dollars, the receipt whereof is hereby acknowledged, the following described Real Estate in Jay County in the State of Indiana, to wit:

The southeast quarter of the southwest quarter of section thirty one (31), township twenty four (24) north, range thirteen (13) east, containing forty acres, more or less.

Subject to a mortgage indebtedness of $1400.00, of a certain mortgage given by the grantors herein to The Union Central Life Insurance Company, Mortgage Record 43, page 415.

In Witness Whereof, The said James M. Wright has hereunto set his hand and seal, this 14th day of October, 1931.

James M. Wright. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 14th day of October, A. D. 1931, personally appeared the within named James M. Wright, Grantor in the above conveyance, and acknowledged the same to be his voluntary act and deed, for the uses and purposes herein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed by official seal.

M. M. Mellinger, Notary Public. My commission expires Sep. 4, 1932, (L. S.).

Filed February 25, 1932, at 2:55 P. M.

Jessie B. Humphries, R. J. C.

[fol. 16] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, State of Indiana, hereby certify the above and foregoing to be a full, true, correct and complete copy of the record of a Deed James M. Wright to Emma G. Wright, filed and recorded on the 25th day of February, 1932, in Deed Record No. 80 at page 216 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder, this 14th day of July, 1936.

Daisy B. Heller, Recorder, Jay County. (Seal.)

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[fol. 17] EXHIBIT "E" TO MOTION

No. 18176

Walter C. Wright et al. to James M. Wright:

This Indenture Witnesseth, That Walter C. Wright and Virgie M. Wright, his wife; John E. Coon and Edna E.

Coon, husband and wife, of Jay County in the State of Indiana, Release and Quit Claim to James M. Wright of Jay County, in the State of Indiana, for and in consideration of One ($1.00) dollar, the receipt whereof is hereby acknowledged, the following described Real Estate in Jay County in the State of Indiana, to wit:

The north one half (½) of the northwest quarter (¼) of section four (4) township twenty three (23) north, range thirteen (13) east, and the East one half (½) of the southeast quarter (¼) of section thirty one (31), township twenty four (24) north, range thirteen (13) east.

Also the south half of the east half of the southwest quarter of section thirty one (31) township twenty four (24) north, range thirteen (13) east, containing 40 acres, more or less.

In Witness Whereof, the said grantors Walter C. Wright and Virgie M. Wright, his wife, and John E. Coon and Edna E. Coon, husband and wife, have hereunto set their hands and seals, this 13th day of April, 1935.

Walter C. Wright. (Seal.) John E. Coon. (Seal.)
Virgie M. Wright. (Seal.) Edna E. Coon. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 13th day of April, A. D. 1935, personally appeared the within named Walter C. Wright and Virgie M. Wright, his wife, and John E. Coon and Edna E. Coon, husband and wife, Grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed, for the uses and purposes hereinmentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

Idora Holmes, Notary Public. My commission expires March 9th, 1937, (L. S.).

Filed April 13, 1935, at 3:50 P. M.

Jessie B. Humphries, R. J. C.

[fol. 18] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, and State of Indiana, hereby certify the above and foregoing to

be a full, true, correct and complete copy of the record of a Deed Walter C. Wright et al. to James Wright, filed and recorded on the 13th day of April, 1936, in Deed Record No. 82 at page 38 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder, this 14 day of July, 1936.

Daisy B. Heller, Recorder of Jay County. (Seal.)

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[fol. 19] EXHIBIT "F" TO MOTION

Sheriff's Deed on Execution or Decree

This Indenture Witnesseth, That Tandy Ferguson, as Sheriff of Jay County, in the State of Indiana, by virtue of a certificate of purchase dated on the 20th day of July, 1935, issued by Tandy Ferguson who at that time was Sheriff of said County, to The Union Central Life Insurance Company showing the purchase by The Union Central Life Insurance Company of the Real Estate hereinafter described for the sum of Twelve thousand one hundred seventy four Dollars and thirty one Cents, the receipt whereof is hereby acknowledged, on a sale made by virtue of certified decree issued out of the Circuit Court of Adams County, in the State of Indiana (see Execution Docket No. 1, page 463), upon a judgment rendered by the Judge of the Adams Circuit Court, on the 27th day of May, 1935, in Cause No. 14942 wherein The Union Central Life Insurance Company is plaintiff and James M. Wright, et al. are defendant (see Order Book No. 68, page 335), in consideration of said sum of Twelve thousand one hundred seventy four and 31/100 Dollars, conveys to The Union Central Life Insurance Company of Hamilton County and State of Ohio in pursuance of said certificate of purchase, the following Real Estate, situate in Jay County, to wit: The Southeast Quarter of section thirty-one (31), township Twenty four (24) North, Range Thirteen (13) East, containing One Hundred Sixty (160) acres, more or less. Also the southeast quarter of the southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres, more or less. Containing in both the above described tracts two hundred (200) acres, more or less. To have and

to hold the premises aforesaid, with the privileges and appurtenances to the said purchaser, heirs and assigns forever, in as full and ample a manner as the same was held by James M. Wright et al. as described in said certificate of purchase and sold as property of James M. Wright, et al.

[fols. 20-21] In Witness Whereof, I the undersigned, Sheriff aforesaid, have hereunto set my hand and seal, this 20th day of July, 1936.

—— ——, Sheriff, Jay County.

STATE OF INDIANA,
Jay County, ss:

Before the undersigned, Notary Public in and for said County, this day personally appeared Tandy Ferguson, who in the capacity of Sheriff of said County, acknowledged the execution of the foregoing indenture, as his act and deed for the purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and official seal this 20th day of July, A. D. 1936.

—— ——, Notary Public. My commission expires —— —, ——.

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO MOTIONS TO STRIKE OUT CERTAIN REAL ESTATE FROM SCHEDULES—Filed November 6, 1936

Comes now James M. Wright, petitioner herein, and for answer and objections to the motions of The Union Central Life Insurance Company to strike certain real estate from his Schedules, alleges:

That he filed his petition and Schedules under Section 75 of the Bankruptcy Act in the United States District Court for the Northern District of Indiana, Fort Wayne Division, on the 30th day of October 1934; that said cause was referred to Bryon G. Jenkins, Conciliation Commissioner of Jay County, Indiana; that all the steps under said Section 75 were taken; that later petitioner amended his petition under Subsection (s) of Section 75, as amended August 28, 1935, and he was duly adjudged a Bankrupt.

That subsequent thereto, on the 24th day of February,

1936, an agreement was entered into between Carman Alexander, the duly appointed, qualified and acting Trustee in Bankruptcy of James M. Wright, the petitioner herein, party of the first part and James M. Wright, party of the second part. That said Trustee rented the real estate set out in petitioner's petition and Schedules to him by virtue of what is known as the Frazier-Lemke Act (Subsection (s) of Section 75, as amended August 28, 1935) for a period covering the Bankruptcy. That said agreement included the same tracts of real estate as set out in said motions of said Company. That said agreement was examined and [fols. 23-24] approved by Byron G. Jenkins, said Conciliation Commissioner and Referee, on the 24th day of February, 1936. That petitioner has farmed said real estate pursuant to said agreement since said date. That the rental provided for in said agreement has been turned over by petitioner to said Trustee, who holds the same subject to the order of said District Court.

Petitioner further alleges that said Union Central Life Insurance Company filed its complaint for possession of part of said real estate in the Jay Circuit Court and damages for its unlawful detention against petitioner et al. That judgment was rendered against the defendants in said cause, and petitioner et al. appealed from said judgment and said appeal is now pending in the Supreme Court of Indiana. That said Company also brought suit in the Adams Circuit Court for possession of the remainder of said real estate and judgment was rendered in favor of the plaintiff and defendants, including petitioner, filed their appeal bond and are now perfecting said appeal.

That said appeals stay all proceedings as to said judgments and the proceedings before said Conciliation Commissioner concerning said real estate.

Wherefore petitioner asks that the Conciliation Commissioner and Referee herein overrule said motions to strike out said real estate from said Schedules or continue the same until said Supreme Court decides said appeals and for all other proper relief in the premises.

Cook & Bailey & Wheeler Ashcraft, Attys. for Petitioner.

*Duly sworn to by James M. Wright. Jurat omitted in printing.*

[fol. 25] IN UNITED STATES DISTRICT COURT

REPORT OF CONCILIATION COMMISSIONER—Filed December 3, 1936

November 6, 1936.

To the Hon. Thomas W. Slick, Judge U. S. District Court for Northern District of Indiana, Fort Wayne Division:

In the Matter of JAMES M. WRIGHT, Debtor

The undersigned Conciliation Commissioner begs to submit the following report of his doings herein:

September 6th, 1936. Verified motion by Union Central Life Insurance Company asking that all real estate set out in its petition be stricken from debtor's schedule and that the Trustee make a final report and be discharged as to specific real estate received.

October 26th, 1936. Notices by mail to all creditors advising of the filing of the motion and of the date of hearing set for November 6th, 1936.

November 6, 1936. Verified answer by debtor filed asking that the Commissioner recommend overruling of above motion, or asking continuance, pending the appeal of an action brought by Union Central Life Insurance Co., from the Jay Circuit Court and Adams Circuit Court to the Supreme Court of Indiana, on question of possession, filed.

Submission: Motion to strike out the real estate and for the discharge of Trustee, submitted.

By agreement of council, R. D. Wheat, Attorney for Union Central Life Insurance Company, and Cook & Ashcraft, attorneys for debtor, all evidence to be submitted to the commissioner are the admitted allegations in the verified motion by Union Central Life Insurance Co., and the verified allegations in the answer of debtor.

Upon examining the motion to strik[illegible] the real estate from debtor's schedule and that the [illegible]e herein make and file his final report as to the specific [illegible]eal estate set up in the motion of Union Central Life Insurance Company, and also upon examining the answer to said motion by the debtor, your commissioner finds:

[fol. 26] 1. That the real estate described in the schedule of debtor is identical with the real estate described in the

motion by Union Central Life Insurance Company, Excepting,

2. That there still remains in said schedule the following described real estate not effected by the motion, to-wit:

The south half of the northeast quarter of section 4, township 23 north range 13 east containing 80 acres.
Also, part of the east half of the north half of the southwest quarter section 4, township 23 north range 13 east, containing 1½ acres.

3. That the allegations in re the conveyances in the motion of Union Central Life Insurance Co. to strike certain real estate from the debtor's schedule are true and correct as shown by the records of the Recorder of Jay County, and that the motion in its entirety should be sustained.

Recommendations;

The real estate described by Union Central Life Insurance Company should be stricken from debtors schedule and the Trustee be ordered to file his final report as to said real estate.

The Original Petition, Schedule, Motion and Answer in this cause are returned herewith for the further order of the Court.

December 2, 1936.

Respectfully submitted, Byron G. Jenkins, Conciliation Commissioner, Jay County, Indiana.

December 2nd, 1936. Supplemental report:

The Trustee, Carman Alexander, together with the debtor, James M. Wright, called at the office today, and the Trustee reported that on the farms included in the schedule of debtor, the debtor has harvested about 300 bushe-s of soy beans and that the crop could be hauled to market now, and the two fifths of said beans could be turned over to the trustee, but that the attitude of debtor, James M. Wright is that he intends to hold all the crops there until the final disposition of the Fraser Lemke bill as to its con-
[fol. 27] stitutionality, if the bill is upheld, he will turn

over the two fifths, if unconstitutional, he will keep everything.

This is the Exact Attitude of Debtor.

Bryon Jenkins, Conciliation Commissioner.

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[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEBTOR'S PETITION TO REVIEW DECISION AND RECOMMENDATIONS OF REFEREE—Filed December 10, 1936

Comes now James M. Wright and files his petition for a review by the Honorable Judge of said District and Division of the decision and recommendations of said Referee, entered in said cause on December 2, 1936, at Portland, Indiana, in said Division, on the verified motion by Union Central Life Insurance Company asking that all real estate set out in its petition be stricken from Debtor's schedule and that the Trustee make a final report and be discharged as to specific real estate, on the following grounds:

1. Said Conciliation Commissioner and Referee erred in granting the petition of the Union Central Life Insurance Company to strike the real estate from the Debtor's Schedules.

2. Said Conciliation Commissioner and Referee erred in recommending that the real estate described in the mortgage of the Union Central Life Insurance Company be stricken from the Debtor's Schedules in Bankruptcy.

3. Said Conciliation Commissioner and Referee erred in not holding that the Trustee, Carmen Alexander, should continue to act as such and hold the Landlord's share of the crops in said real estate for three years from August 28, 1935, as provided in Subsection (s) of the Bankruptcy Act of said date.

4. That an action in which the validity of the Act last mentioned is now pending before the Supreme Court of Indiana in the case of Walter C. Wright and James M. Wright vs. The Union Central Life Insurance Company from the Jay Circuit Court and the jurisdiction and control [fol. 29] of said Cause is now therein and said Conciliation

Commissioner and Referee has no power or authority to interfere with said Cause until said Court decides said question. That said Debtor filed an appeal bond in said Appeal which was approved by said Jay Circuit Court which stays all proceedings therein and said Conciliation Commissioner and Referee had no power to interfere with said Cause while said Appeal is pending. That the land in said action is the same as in said Schedules.

Wherefore, the Debtor prays the Referee to certify this cause to the Judge of the United States District Court for the Northern District of Indiana, Fort Wayne Division, for review, as provided by law and that said decision and recommendations be held null and void and set aside.

James M. Wright, Debtor.

*Duly sworn to by James M. Wright. Jurat omitted in printing.*

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[fol. 30] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS

Comes now James M. Wright, Appellant in said Cause and files the following assignment of errors upon which he relies in the prosecution of his petition to review the decision and recommendations of said Conciliation Commissioner and Referee made December 2, 1936, in said Cause on the verified motion of the Union Central Life Insurance Company asking that all real estate set out in its petition be stricken from Debtor's schedule and that the Trustee make a final report and be discharged as to specific real estate, to-wit:

1. Said Conciliation Commissioner and Referee erred in granting the petition of the Union Central Life Insurance Company to strike the real estate from the Debtor's Schedules.

2. Said Conciliation Commissioner and Referee erred in recommending that the real estate described in the mortgage of the Union Central Life Insurance Company be stricken from the Debtor's Schedules in Bankruptcy.

3. Said Conciliation Commissioner and Referee erred in not holding that the Trustee, Carmen Alexander, should continue to act as such and hold the Lan-lord's share of the crops in said real estate for three years from August 28, 1935, as provided in Subsection (s) of the Bankruptcy Act of said date.

4. That an action in which the validity of the Act last mentioned is now pending before the Supreme Court of Indiana in the case of Walter C. Wright and James M. Wright vs. The Union Central Life Insurance Company from the Jay Circuit Court and the jurisdiction and control of said Cause is now therein and said Conciliation Commissioner and Referee erred in holding that he had the power and authority to determine the matters set out in said creditor's motion.

[fol. 31] The Debtor presents this assignment of errors to the Referee and prays that the same be certified to the Judge of the District Court of the United States, for the Northern District of Indiana, Fort Wayne Division, for review and that said decision and recommendations be reviewed by said Court in all things set aside.

James M. Wright, Debtor.

*Duly sworn to by James M. Wright. Jurat omitted in printing.*

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[fol. 32] IN UNITED STATES DISTRICT COURT

DEBTOR'S BRIEF ON ASSIGNMENT OF ERRORS

The Debtor, James M. Wright, now submits the following brief on his assignment of errors as to the ruling of the Referee in said Cause:

1. Section 75 and its Amendment, Subsection (s) August 28, 1935, are valid exercises of the powers of Congress over the subject of Bankruptcies.

2. The Constitution having clothed Congress with the power to legislate on the subject of bankruptcies, it is the sole judge of the means or law which it may adopt to carry out this Constitutional power. And any interference of the Courts with that discretion is an encroachment of the judiciary on the Legislative Department of the Government.

This is the rule laid down by Chief Justice Marshall and has been recognized and adhered to since his day.

Continental Ill. etc. vs. Chicago & Rock Island, etc., 72 Fed. (2d) 443. Same case on Appel., 79 L. Ed. (U. S.) 642.
McCulloch vs. Maryland, 4 L. Ed. (U. S.) 314.
Billings vs. U. S., 58 L. Ed. (U. S.) 606.
Martin vs. Hunter, 1 Wheaton, 304.
Cohens vs. Virginia, 6 Wheaton, 264.
Atkins vs. Kansas, 48 L. Ed. (U. S.) 158.
McCray vs. U. S., 49 L. Ed. (U. S.) 95.

3. Section 75 of the Bankruptcy Act and its Amendments are a proper exercise of the powers of Congress over the subject of Bankruptcies. It is an appropriate means or remedy of carrying out this power of Congress in the existing emergency as to farm Debtors and is supreme over all State Legislation and all of the rights of farm mortgages thereunder.

United States, etc. vs. Pamp, 77 Fed. (2nd), 9, 13.
Continental vs. C. R. I. etc., 79 L. Ed. 642, 651.

4. The equity of redemption relates only to the remedy and it can be changed and extended without impairing the obligation of the contract.

Home Building, etc. vs. Blaisdell, 78 L. Ed. 413.

[fol. 33] 5. The power of Congress to enact Section 75 of the Bankruptcy Act and its Amendments cannot be restricted by the Laws of Indiana or the rights of a mortgagee thereunder. Such rights must yield and give way to the Supreme Law of the Land.

6. As to whether this Bankruptcy Act and its Amendments were wise or proper remedies is a question in the discretion of Congress and the Courts have no power to interfere with that discretion.

McCulloch vs. Maryland and cases cited under proposition 2.

7. This Act of Congress cannot be held void because it conflicts with a law of Indiana.

Wherefore, the Debtor says that said orders and rulings of said Referee are void and should be set aside.

Respectfully submitted, Cook & Bailey, Attorneys for Debtor.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING PETITION FOR REVIEW, ETC.

And afterwards, to-wit: on the 14th day of December, 1936, comes the Debtor herein and now the Petition to Review heretofore filed is overruled by the Court, to which ruling of the Court the Debtor at the time excepts. And now the recommendation of the Conciliation Commissioner is approved and held valid by the Court, to which ruling of the Court Debtor at the time excepts.

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[fols. 34-35] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL FROM DECISION OF DISTRICT COURT—Filed December 23, 1936

James M. Wright, the petitioner herein says he is aggrieved by the order, decision and judgment of said District Court made and entered in the above Cause on December 14, 1936, denying his petition to review the order and decision of Byron C. Jenkins, Referee in Bankruptcy in said Cause for Jay County, Indiana, and does hereby appeal from said order, decision and judgment to the United States Circuit Court of Appeals for the Seventh Circuit and prays that his appeal be allowed by this Court and that the transcript of the record of proceedings and papers upon which the said order and decision was made, duly authenticated may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated this 23 day of December, 1936.

James M. Wright, Debtor. Samuel E. Cook, Atty. for Appellant.

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[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed December 23, 1936

Comes now James M. Wright, Debtor in said Cause, and files the following assignment of errors with his petition

for appeal upon which he will rely in the prosecution of this appeal in the United States Court of Appeals for the Seventh Circuit in the above Cause from an order, ruling, decision and judgment made and entered by the Judge of said District Court on December 14, 1936, and says the order, ruling, decision and judgment in this Cause is erroneous and unjust for the following reasons, to-wit:

1. The District Court erred in refusing and denying the debtor's petition for review of the decision of the Referee herein.

2. The District Court erred in not reviewing the decision and order of the Referee and in not reversing and setting the same aside.

3. The District Court erred in not ordering said Referee to set aside the order he made therein striking said real estate from said schedules.

4. The District Court erred in striking out and removing said real estate described in said proceedings before said Referee from the schedules filed in this cause.

[fol. 37] 5. The District Court erred in not allowing the real estate described in said proceedings to be and remain in said schedules as part of the assets of said debtor's estate for the benefit of the creditors named in said schedules.

6. That by virtue of the original petition and schedules and the amended debtor's petition referring to said schedules filed October 11, 1935, under subsection (s) of the Bankruptcy Act said real estate was brought within the provisions of said Acts and into the District Court and the relief granted in said Acts and the District Court erred in striking out said real estate and denying him said relief.

7. That by virtue of said proceedings the creditors named in said petition had an interest in retaining said real estate as part of the assets of said estate and they could not be deprived of that right without notice and no notice was given to them or either of them of said hearing in said District Court.

8. That said District Court committed other plain errors at said hearing in denying said petition for review and striking said real estate from said schedules of which this Court should take notice.

9. That said errors of said District Court will greatly injure and damage the debtor and deprive him of his rights and relief under said subsection (s) of said Bankruptcy Act and deprive him of his constitutional rights under said Act.

[fols. 38-39] James M. Wright, Debtor.

*Duly sworn to by James M. Wright. Jurat omitted in printing.*

[File endorsement omitted.]

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[fols. 40-41] In United States District Court

[Title omitted]

Order Allowing Appeal

On reading the petition of James M. Wright, dated December 23, 1936, for appeal and consideration of the assignment of errors presented therewith, it is ordered that said appeal herein be allowed to the Circuit Court of Appeals for the Seventh Circuit as prayed for in said petition and the Court orders that a certified transcript of the record and all proceedings in said cause be transmitted by the Clerk of this Court and to said Circuit Court of Appeals sitting at the Post Office Building in the City of Chicago, Illinois.

Dated December 23, 1936.

Thos. W. Slick, Judge United States District Court for the Northern District of Indiana, Fort Wayne Division.

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[fols. 42-44] Citation, in usual form, showing service on Roscoe D. Wheat, filed December 23, 1936 omitted in printing.

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[fol. 45] In United States District Court

[Title omitted]

Notice of Appeal from Decision of District Court—Filed December 23, 1936

Please take notice that James M. Wright, debtor and petitioner herein, has filed in the District Court of the

United States for the Northern District of Indiana, Fort Wayne Division, his petition for appeal and does hereby appeal from the order, decree and judgment of said District Court made and entered by the Hon. Thomas W. Slick, Judge of said Court and entered herein on the 14th day of December, 1936, denying the petition of said Debtor to review the order and decision of Byron G. Jenkins, Referee in Bankruptcy in said cause, of Jay County, Indiana, to the Circuit Court of Appeals for the Seventh Circuit to be held in and for said Circuit at the United States Court and Postoffice Building in the City of Chicago, Cook County, Illinois.

Dated this 23rd day of December, 1936.

James M. Wright, Debtor.

[fol. 46] The undersigned, Roscoe D. Wheat, Attorney for the Union Central Life Insurance Company, hereby accepts service of the attached notice of appeal.

Dated this 23rd day of December, 1936.

Roscoe D. Wheat, Attorney.

[File endorsement omitted.]

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[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD ON APPEAL—Filed December 31, 1936

To the Clerk of the District Court of the United States for the Northern District of Indiana, Fort Wayne Division:

Please prepare and certify forthwith a transcript of the following records in the above entitled cause on appeal, to the United States Circuit Court of Appeals for the Seventh Circuit:

1. Motion of Union Central Life Insurance Company to strike out the real estate and for the discharge of Trustee.
2. Answer of James M. Wright, Debtor.
3. Conciliation Commissioner's and Referee's Report.
4. Conciliation Commissioner's and Referee's certificate to the Judge showing the question presented, a summary of the evidence relating thereto, and the finding and order of the Referee thereon.

5. Debtor's petition for review.
6. Debtor's assignment of errors, and brief thereon.
7. Order of the Judge of this Court denying Debtor's petition for review and exception granted to the Debtor.
8. Petition for appeal filed by James M. Wright.
9. Assignment of errors filed by James M. Wright.
10. Order allowing the appeal.

[fols. 48-49] 11. The following original documents shall be transmitted with the transcript, to-wit:

(a) The original citation on appeal, with proof of service endorsed thereon.

(b) The original notice of appeal, with proof of service endorsed thereon.

(c) Copy of præcipe for record on appeal filed by James M. Wright with proof of service endorsed thereon.

James M. Wright, Debtor, by Samuel E. Cook, His Attorney. Samuel E. Cook, Attorney for Appellant.

The undersigned Attorney of record for said creditor hereby accepts service of the above Præcipe for record on appeal and the receipt of a copy thereof.

This 31st day of December, 1936.

Roscoe D. Wheat, Attorney for Appellee.

[File endorsement omitted.]

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[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION TO ENLARGE TIME FOR FILING TRANSCRIPT ON APPEAL TO CIRCUIT COURT OF APPEALS—Filed January 7, 1937

To the Hon. Thomas W. Slick, Judge of Said Court:

Comes now James M. Wright, the Appellant in said Cause and respectfully represents to the Court:

That this Court on December 23, 1936, allowed him an appeal to the Circuit Court of Appeals for the Seventh Circuit.

That he filed his præcipe on December 31, 1936, in the office of the Clerk in the Fort Wayne Division at Fort

Wayne, Indiana, for the preparation and certification of a transcript of the record in this cause to said Circuit Court of Appeals.

That in the citation filed herein the Court fixed January 20, 1937, as the return day in said Appeal.

That on account of the press of public business in the office of said Clerk in said District and Division, it will be impossible for said Clerk and Deputies to prepare said transcript of the proceedings in said cause for Appeal in time to file the same by said return day.

Wherefore the Appellant prays that the Court enlarge the time for filing said transcript of the record and copies of the præcipe with the Clerk of said Court of Appeals until February 20, 1937.

James M. Wright.

Subscribed and sworn to before me this 7th day of January, 1937. Margaret Long, Clerk. (Seal.)

[fols. 51-52] Samuel E. Cook, Counsel for Appellant.

The above statement is correct. This 7th day of January, 1937.

Attest: Margaret Long, Clerk, District Court.

The above petition is granted and the time to file said transcript is enlarged as prayed for to February 20, 1937.

Done this 7th day of January, 1937.

Thos. W. Slick, Judge District Court.

[File endorsement omitted.]

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[fol. 53] In United States District Court

[Title omitted]

Showing as to Cost Bond on Appeals to Circuit Court of Appeals—Filed January 7, 1937

Comes now James M. Wright, Appellant in said cause and shows to the Court that the action for the possession of the following real estate herein was tried in the Jay Circuit Court:

The north half of the northwest quarter of Section 4, Township 23 north, of range 13 east, in Jay County, Indiana.

That a term time appeal was taken by the debtor from the judgment in said cause to the Supreme Court of Indiana and a bond given which stays the execution of said judgment and said appeal is still pending in said Court.

That the action for the possession of the following part of said real estate herein was tried in the Adams Circuit Court:

The northeast quarter of the southeast quarter of Section 31, Township 24 north, of range 13 east, in Jay County, Indiana, and the southeast quarter of said quarter and the southeast quarter of the southwest quarter of said section.

That the defendants took a term time appeal from the judgment in said cause to the Supreme Court of Indiana and gave a bond which stays the execution of said judgment.

That said James M. Wright has taken an appeal from the decision of the District Court dated December 14, 1936, [fols. 54-55] and an appeal from the decision of said Court dated December 31, 1936.

That the only liability in each of said appeals is the costs therein. That these costs will have to be advanced as the appeal progresses.

Wherefore he asks the Court to fix the cost bond in each of said appeals at $200.00.

That said sureties on said first appeal bond are the owners of property which is worth more than $500.00 over and above her indebtedness and obligations and exemptions and he tenders said bonds and asks the Court to examine and approve the same, and that said John E. Coon, surety on said second appeal bond is worth more than $200 above his exemption and indebtedness.

James M. Wright, Debtor.

Subscribed and sworn to before me this 7th day of January, 1937.

Jane H. Allen, Dep. Clerk, U. S. Dist. Court.

Samuel E. Cook, Counsel for Appellant.

[File endorsement omitted.]

[fol. 56] Bond on appeal for $200.00, approved and filed January 9, 1937, omitted in printing.

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[fols. 57-59] Clerk's certificates to foregoing transcript omitted in printing.

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[fol. 1] [Caption Omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

6183–6184

In the Matter of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT, Appellant,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY, Appellee

Appeals from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

RECITAL AS TO DOCKETING

And, to-wit: On the twentieth day of February, 1937, the above entitled causes were docketed in this Court.

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[fol. 2] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Two Appeals from the Decision of the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, Hon. Thomas W. Slick, Judge.

No. 6183. No. 6184

In the Matter of the Bankruptcy of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT, Debtor, Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY, Appellee

PETITION TO CONSOLIDATE APPEALS AND PRINT BUT ONE RECORD, ETC.—Filed March 11, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals, Seventh Circuit:

The petition of James M. Wright, Appellant in the above Cause, respectfully shows to the Court:

1. That Appellant was allowed Appeals from two decisions of said District Court in said Cause.

2. The first was from the action of the Court on December 14, 1936, in overruling or denying his petition to review the decision of the Referee in said Cause. The second was from the action of the Court on December 31, 1936, in denying his application to amend Schedules A-2 and B-1.

3. In the first the Referee had stricken certain real estate from the Schedules.

4. Appellant filed his petition asking the District Court to revie v this order. The Court overruled the petition and [fol. 3] approved the action of the Referee, to which he excepted and on his petition was allowed an appeal to this Court.

5. Appellant then filed his application to amend his Schedules A-2 and B-1 so as to include said real estate and filed therewith his amended schedules. The Court denied this application, to which he excepted and on his petition was allowed a second appeal to this Court.

6. It is plain Appellant had to appeal from the first decision, striking it out, or be bound thereby.

7. Appellant concluded that the proceedings before the Referee did not set out all of the facts in relation to his interest in the real estate and that in order to protect his rights he would have to apply to the Court for leave to amend said schedules, as provided in General Orders in Bankruptcy No. 11.

8. In other words, Appellant concluded that the proper remedy was to ask the Court to allow him to amend his schedules and show his interest in the land at the time he filed his petition in bankruptcy. That this would cure the situation and give the Court an opportunity to rectify any error there might be in the first ruling, in striking out what he deemed to be part of the assets of his estate.

9. This is not the time nor place to discuss the merits of whether the land should be in the schedules or out. To make a long story short: The Appellant wants to leave the land in, while the Appellee wants to leave it out. It is apparent that both appeals present the same identical question. It is also plain that the application to amend under Order No. 11 would be the most appropriate method of

presenting and settling the question as to whether he rightfully included the land embraced in Appellee's mortgage in his petition in Bankruptcy. The Appellee will not be harmed by allowing the question to be presented in this way.

[fols. 4-7] 10. Since it is shown here that the second appeal, No. 6184, sets out more facts than are set out in the proceedings in the first, Appellant urges that the first appeal of December 14, 1936, should be consolidated with the second of December 31, 1936, No. 6184 and that only the record in the last be printed and that the record in the first be not printed and that only one set of briefs be prepared, printed and filed in the consolidated appeal. That each of said appeals has been docketed and he has paid the fee of $25.00 in each.

11. That to require him to have both of said transcripts printed and two sets of briefs prepared and printed would impose upon him an unnecessary expense which he can not bear at this time. Section 734 of the Judicial Code suggests a liberal policy on this question. (U. S. Code 1928, page 957).

Wherefore Appellant prays the Court to grant the petition herein and order said first appeal, No. 6183, consolidated with No. 6184; that it order only the transcript in said No. 6184 printed and that the transcript in No. 6183 be not printed; that the Court further order but one set of briefs be prepared, printed and filed herein and that the further proceedings herein be carried on in said consolidated case.

Respectfully submitted, Samuel E. Cook, Counsel for Appellant.

*Duly sworn to by James M. Wright. Jurat omitted in printing.*

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[fol. 8] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 6183. No. 6184

[Title omitted]

OBJECTIONS TO PETITION AND MOTION OF THE APPELLANT TO CONSOLIDATE APPEALS—Filed March 13, 1937

And now comes The Union Central Life Insurance Company, a corporation, appellee in the above causes, and files

this, its objections to the petition of the appellant to consolidate the above appeals, and which petition further prays that the Clerk of the United States Circuit Court of Appeals print but one record.

This appellee objects to the consolidation of the first appeal, No. 6183, with appeal No. 6184 for the following reasons:

1. The appeal in Cause No. 6183 is from the ruling of the United States District Court for the Northern District of Indiana, Fort Wayne Division, on an order entered on [fol. 9] December 14, A. D., 1936, which order of said date confirmed the recommendation of the Referee. The statement contained in Paragraph No. 2 of the Petition to Consolidate is in error in that it states that the appeal in Cause No. 6183 is based on an order of the United States District Court on December 14, 1936, overruling or denying the appellant's petition to review the decision of the Conciliation Commissioner in said cause.

2. The appeal in Cause No. 6184, pending in this Court, is based upon an order of the Court entered on December 31, 1936, denying the petition of the appellant to amend Schedules A-2 and B-1, which attempt on the part of the appellant during the pendency of the proceedings in the United States District Court for the Northern District of Indiana, was to do something which the United States District Court refused to allow by its order entered on December 14, 1936, and the appeal from the order of December 31, 1936, is predicated upon a different premise.

3. The appellee further objects to the petition to consolidate the two appeals, and particularly objects to the petition of the appellant for leave to have printed but one record, and that is the record in Cause No. 6184, as suggested by the appellant, for the following reasons:

The bankrupt, to-wit, the appellant, first filed his petition in the United States District Court for the Northern District of Indiana, Fort Wayne Division, and included certain real estate upon which complete foreclosure had been had, and in which real estate the said bankrupt, appellant, had only an equity of redemption. At the time of the filing of the petition to be adjudicated a bankrupt, the title to the real estate in question was in other persons and [fol. 10] not in the name of the bankrupt. A motion to strike

this real estate from the schedule of the bankrupt was filed and an answer to said motion filed by the bankrupt. After hearing, the Conciliation Commissioner recommended to the United States District Court for the Northern District of Indiana, Fort Wayne Division, that the motion of the appellee to strike said real estate from the schedule of the bankrupt be sustained, and after due certification of said recommendation and hearing by the United States District Court for the Northern District of Indiana, said recommendation of the Conciliation Commissioner was approved and the real estate in question ordered stricken from the schedules. An appeal was taken from this order and said appeal is represented in this Court as Cause No. 6183.

Thereafter, the bankrupt, appellant in this cause, filed a motion in the United States District Court for the Northern District of Indiana, to reinstate the real estate in question and this motion was presented and overruled by Honorable Judge Slick, of the United States District Court for the Northern District of Indiana. On this ruling an appeal was taken and represented in this Court by Cause No. 6184. In the latter appeal no evidence was heard or presented but in Cause No. 6183 the issue upon which the appeal was taken was submitted by agreement of the parties.

The appellee in this cause, therefore, objects to the submission of this matter upon the record alone in Cause No. 6184, and objects to the consolidation of the appeals in Cause No. 6183 and Cause No. 6184.

4. The appellant states in Paragraph 9 of his petition to consolidate that both appeals present the same identical question. This is in error. The appellant sets forth in his [fols. 11-12] petition to consolidate in Paragraph 10 that the second appeal, to-wit, No. 6184, sets out more facts than are set out in the proceedings in the first. This is in error. In the first appeal, pending in this Court as Cause No. 6183, the verified motion of the appellee to strike the real estate in question from the schedule of the bankrupt, appellant, and the answer to said motion, were submitted to the Conciliation Commissioner by agreement. After examination of the question and certification thereof, and after hearing, the United States District Court for the Northern District of Indiana, Fort Wayne Division, sustained the recommendation of the Conciliation Commissioner, and the real estate

in question was ordered stri-ken from the bankrupt's schedule.

In the second appeal the facts are not similar.

5. As a further objection, the appellee respectfully represents that the motion to consolidate the two appeals should have properly been made before the United States District Court for the Northern District of Indiana, Fort Wayne Division, if, as the appellant sets forth, there would be unnecessary expenses involved in two appeals, and that question presented and discussed and passed upon by the lower court, which was informed and acquainted with the two distinct issues involved. In that case, if appellant is correct, a consolidated appeal would have been allowed and filed in this Court.

We respectfully submit that the motion to consolidate the two causes comes too late at this time.

Respectfully submitted, Roscoe D. Wheat, Arthur P. Feigen, Albert J. Feigen, Counsel for Appellee.

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[fols. 13-14] In United States Circuit Court of Appeals

[Title omitted]

Order Consolidating Causes—March 16, 1937

On petition of counsel for appellant, It is now here ordered that Cause No. 6183 be consolidated with Cause No. 6184, and that the record in Cause No. 6184 be printed and the record in Cause No. 6183 be not printed.

It is further ordered that only one set of briefs be filed in said consolidated cause.

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[fol. 15] In United States Circuit Court of Appeals

No. 6183, No. 6184

[Title omitted]

Motion for Leave to Refer to Transcript in Cause No. 6183—Filed April 14, 1937

And now comes The Union Central Life Insurance Company, a corporation, Appellee in the above causes, and files this, its Motion and Petition for leave to refer to the Transcript of Record in Cause No. 6183 in its Brief and Argument, and also for leave to direct the Clerk to print this Petition and the Court's order with reference thereto, and

to attach same to the printed Transcript of Record in Cause No. 6184.

For reasons for the above motion this Appellee sets forth the following:

1. The above proceedings arise on two appeals, being Cause No. 6183 and Cause No. 6184.

2. This Honorable Court, on March 16, 1937, entered an order consolidating the above appeals and further ordering that the Transcript of Record in Cause No. 6183 be not [fol. 16] printed, and that one set of Briefs be filed in the consolidated case. Said order was based upon the petition of the Appellant, to which petition objections were filed by this Appellee.

3. The appeal in Cause No. 6183 is from the ruling of the United States District Court, for the Northern District of Indiana, Fort Wayne Division, on an order entered December 14, 1936, which order of said date confirmed the recommendation of the Referee. At the time that the petition in said proceedings, to-wit: Cause No. 6183, was filed by the bankrupt (Appellant), said James M. Wright, bankrupt, Appellant, was not the owner of the real estate in question. The appeal in Cause No. 6183 is predicated upon the ruling of the United States District Court, for the Northern District of Indiana, Fort Wayne Division, striking said real estate from the schedules of said bankrupt.

4. Subsequent to the entry of said order on December 14, 1936, the real estate in question was deeded back by the then owner to the bankrupt, Appellant in the above proceedings, and the United States District Court, for the Northern District of Indiana, Fort Wayne Division, entered an order on December 31, 1936, pursuant to the motion of the Appellant, denying the Appellant's motion to amend Schedules A-2 and B-1 to include said real estate. The second appeal, in Cause No. 6184, is predicated upon that ruling.

5. The printed Transcript of Record in Cause No. 6184 does not show the above facts and it is necessary for this Appellee, in order to bring said facts properly before this Honorable Court, to be able to refer to the Transcript of Record in Cause No. 6183.

6. There are also other facts set forth in the appeal num- [fols. 17-18] bered Cause No. 6183, and which facts the Ap-

pellee believes are pertinent and necessary to be brought before the Court in the Appellee's Brief and Argument.

Wherefore, this Appellee moves and prays this Honorable Court for leave to refer to the Transcript of Record in Cause No. 6183 in the Appellee's Brief and Argument, and also for directions to the Clerk of the United States Circuit Court of Appeals to have this petition printed and this Court's order with reference to this petition of the Appellee printed and to attach said printed petition and Court's order to the printed Transcript of Record in Cause No. 6184.

Respectfully submitted, Roscoe D. Wheat, Arthur P. Feigen, Albert J. Feigen.

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[fols. 19-20] IN UNITED STATES CIRCUIT COURT OF APPEALS.

[Title omitted]

ORDER GRANTING MOTION—April 16, 1937

It is ordered by the Court that that part of the petition of appellee for leave to refer in the appellee's brief and argument to the transcript of the record in Cause No. 6183, which is not printed, be, and the same is hereby granted.

It is further ordered that that part of the petition of Appellee for directions to the Clerk of this Court to have this Petition and this Court's order with reference thereto printed and attached to the copies of the printed record in Cause No. 6184, be, and the same is hereby denied.

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[fol. 21] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

Appeal No. 6183-6184, Consolidated

[Title omitted]

APPELLANT'S PETITION TO RESTRAIN THE APPELLEE AND THE SHERIFF OF JAY COUNTY, INDIANA, FROM EXECUTING THE JUDGMENT OF THE STATE COURT AND REMOVING HIM AND HIS TENANT FROM THE REAL ESTATE HEREINAFTER DESCRIBED—Filed June 11, 1937

Comes now James M. Wright, the Appellant in the above entitled Cause, and respectfully represents to the Court:

That the Appeal from the District Court in the above entitled Cause is to settle the question as to whether or not the following real estate in the Schedules attached to Appellant's petition in Bankruptcy, situated in Jay County, Indiana, and described as follows, to wit:

The north half of the north-west quarter of Section 4, township 23, north, of range 13 east, containing 80 acres, more or less,

was properly included therein.

[fol. 22] That prior to the decision of the Federal Supreme Court holding Subsection (s) of the Bankruptcy Act of August 28, 1935, valid, the Appellee contended that said real estate was not properly included in said Schedules and the Appellant contended that said real estate was properly included therein and that he was entitled to the benefits of said new Subsection (s) and the possession of said real estate for three years from said date.

That on December 14, 1936, said District Court ruled in favor of the Appellee and struck said real estate from said Schedules and thereby attempted to deprive him of the possession of said land and the other rights given him therein.

Appellant contends in this Appeal that since said Supreme Court held said Subsection (s) valid, that said District Court erred in striking out said real estate from said Schedules.

That prior to said Federal decision and this Appeal, said Appellee, The Union Central Life Insurance Company, commenced an action in the Jay Circuit Court of Indiana to eject the Appellant and his tenant, Walter C. Wright, from said real estate.

That Appellant contended in said State Court that the exclusive jurisdiction and control of the possession of said real estate was vested in said Court of Bankruptcy and that said State Court had no jurisdiction or control over the same, and that Appellant was entitled to possession of said real estate for three years from the passage of said new Subsection (s). That said State Court had no power to deprive him of that possession. Both of these decisions were made before the Federal Supreme Court held said new Act valid.

That the State Court declined to take Appellant's view of said Act and it rendered judgment against said Appellant

and his tenant, to the effect that they should be ejected from said real estate.

[fol. 23] That the Appellant now contends that said decisions of said District Court and said State Court were based on the theory that said Subsection (s) was unconstitutional. That said Charles Imel is the Sheriff of said Jay County, Indiana and that said Union Central Life Insurance Company is now threatening and will do so unless restrained by this Court, to have the Clerk of said Jay Circuit Court issue to said Sheriff a copy of said Judgment and that unless restrained by this Court, said Sheriff will execute said Judgment and remove the Appellant and his tenant from said real estate and deliver the possession of the same over to said Life Insurance Company.

That by virtue of said proceedings in Bankruptcy, the Appellant now contends that the exclusive jurisdiction and control over the possession of said real estate is vested in said District Court and that by virtue of this Appeal said jurisdiction and control over said land is vested in this Court of Appeals and that it has power to protect said jurisdiction over said land until this Case can be decided.

That the Appellant cannot give notice to said Insurance Company and said Sheriff of the hearing of this application for a temporary restraining order for the reason that until he could give said notice said Sheriff would have removed him and his tenant from said real estate.

Therefore there exists an emergency to issue a temporary restraining order herein, restraining said Life Insurance Company and said Sheriff until such notice can be given. That the removal of Appellant and his tenant from said real estate will greatly damage them.

Wherefore the Appellant prays the Court to issue an order, restraining said Life Insurance Company and said Sheriff from removing them from said real estate until this Appeal can be determined. That the Court order the Clerk to issue a copy of said order to said Life Insurance Com-
[fols. 24-25] pany and said Sheriff at Portland, Indiana, and a copy thereof to George L. Perry, Coroner of said County or his successor in Office to — served on said Sheriff.

James M. Wright, Debtor.

*Duly sworn to by James M. Wright. Jurat omitted in printing.*

[fols. 26-27] IN UNITED STATES CIRCUIT COURT OF APPEALS

6183-6184

[Title omitted]

ORDER OVERRULING MOTION TO DISMISS, ETC.—June 11, 1937

It is ordered by the Court that the motion of appellee to dismiss these appeals, filed on June 3, 1937, be, and the same is hereby overruled, without prejudice to the right of said appellee to renew said motion at the hearing on the merits of this cause.

The appellant herein having this day presented a petition for a restraining order without notice to counsel for appellee, It is ordered by the Court that a temporary restraining order be and is hereby granted, restraining the Sheriff of Jay County, Indiana, and the appellee, Union Central Life Insurance Company, from removing the appellant in this cause and his tenant from the real estate described in said petition for a restraining order, said temporary restraining order to be in effect until said petition of appellant is finally acted upon by this Court. It is further ordered that the appellant shall forthwith serve a copy of his petition for a restraining order upon counsel for appellee, and said counsel are hereby allowed five days from this date to file suggestions in opposition to said petition.

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[fol. 28] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

Appeal No. 6183-6184, Consolidated

[Title omitted]

APPELLANT'S PETITION TO RESTRAIN THE APPELLEE AND THE SHERIFF OF JAY COUNTY, INDIANA, FROM EXECUTING THE JUDGMENT OF THE STATE COURT AND REMOVING HIM AND HIS TENANT FROM THE REAL ESTATE HEREINAFTER DESCRIBED

SECOND PARAGRAPH—Filed June 14, 1937

Comes now James M. Wright, the Appellant in the above entitled Cause, and for a second paragraph of petition, respectfully represents to the Court:

That the Appeal from the District Court in the above entitled Cause is to settle the question as to whether or not the following real estate included in the Schedules attached to Appellant's petition in Bankruptcy, is properly in said proceedings, to-wit:

The north half of the north-west quarter of Section 4, township 23 north, of range 13 east, containing 80 acres, more or less, in Jay County, Indiana.

[fol. 29] That prior to the decision of the Federal Supreme Court holding Subsection (s) of the Bankruptcy Act of August 28, 1935, valid, the Appellee contended that said real estate was not properly included in said Schedules and the Appellant contended that said real estate was and that he was entitled to the benefits of said new Subsection (s) and the possession of said real estate for three years from said date.

That on December 14, 1936, said District Court ruled in favor of the Appellee and struck said real estate from said Schedules and thereby attempted to deprive him of the possession of said land and the other rights given him therein.

Appellant contends in this Appeal that since said Supreme Court held said Subsection (s) valid, that said District Court erred in striking out said real estate from said Schedules and in denying him of his rights under said new Act.

That prior to said Federal decision and this Appeal, said Appellee, The Union Central Life Insurance Company, had commenced an action in the Jay Circuit Court of Indiana to eject the Appellant and his tenant, Walter C. Wright, from said real estate.

That Appellant contended in said State Court that the exclusive jurisdiction and control of the possession of said real estate was vested in said Court of Bankruptcy and that said State Court had no jurisdiction or control over the same, and that Appellant was entitled to possession of said real estate for three years from the passage of said new Subsection (s) and that said State Court had no power to deprive him of that possession. Both of these decisions were made before the Federal Supreme Court held said new Act valid.

That the State Court declined to take Appellant's view of said Act and it rendered judgment against said Appellant

[fol. 30] and his tenant, to the effect that they should be ejected from said real estate.

That said Appellant now contends that said erroneous decisions of said District Court and said State Court were based on the theory that said Subsection (s) was unconstitutional. That said Charles Imel, is the Sheriff of said Jay County, Indiana, and that said Union Central Life Insurance Company is now threatening and will do so unless restrained by this Court, to have the Clerk of said Jay Circuit Court issue to said Sheriff a copy of said Judgment and that unless restrained by this Court, said Sheriff will execute said Judgment and remove the Appellant and his tenant from said real estate and deliver the possession of the same over to said Life Insurance Company.

That by virtue of said proceedings in Bankruptcy, the Appellant now contends that the exclusive jurisdiction and control over the possession of said real estate is vested in said District Court and that by virtue of this Appeal said jurisdiction and control over said land is vested in this Court of Appeals and that it has power to protect said jurisdiction over said land until this Case can be decided.

That inasmuch as said real estate was in the jurisdiction of said District Court and said owner had appealed from said order striking it out, the Appellant and his tenant put out the crops on said land for the present season of 1937, consisting of 10 acres of corn, 20 acres of oats, and he has also thereon 10 acres of alfalfa, 40 acres in pasture and has sown $40.00 worth of grass seed on said farm at the beginning of the present season.

That for said reason he and his tenant have an equity in said land by virtue of said growing crops. That it would be unwise and do great injury to the Appellant and his tenant and damage said mortgagee to interfere with the work [fols. 31-34] of said tenant. That he should be allowed to proceed with the care and cultivation of said crop until they are matured. That the Appellant and his tenant will render the ⅖ of said crops to said mortgagee which would be a reasonable rent therefor.

That said Appellant and his tenant cultivated said land for the year 1936 and said Appellee refused to accept its share of said crops. That they still have said mortgagee's share of crops and is ready to deliver the same to said trustee for the use of said mortgagee. That said Appellee

is amply secured by Appeal bonds approved in the Jay Circuit Court and by the District Court in the appeals herein for any damages or loss, it may suffer in the rents and profits of said real estate.

That the status in quo should be maintained as to said real estate until the Appellant's right to possession of it can be settled by this Court. That said Appellee will not be harmed by being restrained from ejecting the plaintiff until said Appeals can be decided and on the other hand it will give the Appellant his rights under said new Subsection and said decision of the Federal Supreme Court and an opportunity to finance himself and save said farm.

Wherefore the Appellant prays the Court to issue an order herein restraining said Appellee, the Union Central Life Insurance Company and said Sheriff of Jay County, Indiana, from removing him and his tenant from said land until this appeal can be heard and for all other proper relief in the premises.

Samuel E. Cook, Counsel for Appellant.

*Duly sworn to by James M. Wright. Jurat omitted in printing.*

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[fol. 35] In United States Circuit Court of Appeals, Seventh Circuit

Appeal Nos. 6183-6184, Consolidated

[Title omitted]

Appellee's Objections to Appellant's Petition to Restrain the Appellee and the Sheriff of Jay County, Indiana, From Executing the Judgment of the State Court and Motion of the Appellant to Dissolve the Temporary Restraining Order Heretofore Entered by This Court Without Notice to the Appellee—Filed June 16, 1937

And now comes The Union Central Life Insurance Company, a Corporation, Appellee in the above entitled cause and files this, its objections to the Appellant's petition to restrain the Appellee and the Sheriff of Jay County, Indiana from executing the judgment of the State Court in an

ejectment proceeding, and also to move this Court to vacate the temporary restraining order entered by this Court without notice to the Appellee and for reasons for said objections and grounds for the motion of the said Appellee, sets forth the following:

[fol. 36] (1) The question presented in the appeal in the above entitled cause is whether the Honorable Judge Slick of the United States District Court for the Northern District of Indiana was correct in his ruling that the Bankrupt had no such title in the real estate in question as to entitle him to schedule same in his bankruptcy schedule. The issue involved in the State Court of Indiana, the execution of whose judgment the Appellant asks this Court to restrain, was whether the ejectment suit brought by the Appellee was properly brought.

(2) The undisputed facts are that on October 1, 1925 James M. Wright, the Bankrupt, and Maggie G. Wright executed a mortgage on the farm in question to the Union Central Life Insurance Company, Appellee. On October 14, 1931 James M. Wright and Emma G. Wright, his wife, deeded the farm in question to their son, Walter C. Wright, subject to the encumbrance of Three Thousand ($3,000.00) Dollars on the farm in question, held by the Union Central Life Insurance Company, Appellee. On January 3, 1934 an action was brought to foreclose this mortgage, same being in default, and James M. Wright and Walter C. Wright were made defendants. Emma G. Wright had died and judgment of foreclosure was entered on June 9, 1934 and on July 12, 1934 this real estate was sold by the Sheriff of Jay County, Indiana to the Union Central Life Insurance Company, Appellee. Thereafter, on October 30, 1934 James M. Wright filed his petition in bankruptcy under the Frazier-Lemke Act and on April 13, 1935 Walter C. Wright and wife deeded the property in question back to James M. Wright. On August 2, 1935 the Union Central Life Insurance Company, Appellee, secured a final deed for the real estate in question and thereafter on September 13, 1935 brought an action in ejectment.

[fol. 37] (3) The Circuit Court of Jay County in the action in ejectment after due hearing found that the Union Central Life Insurance Company, Appellee, was entitled to immediate possession of the real estate and rendered a judg-

ment accordingly. From this judgment Walter C. Wright and James W. Wright appealed to the Appellate Court of Indiana and the appeal was perfected and the cause was transferred to the Supreme Court of Indiana because the Appellant claimed that a constitutional question was involved.

(4) On April 2, 1937 the Supreme Court of the State of Indiana affirmed the lower Court. (The opinion of the Supreme Court can be found in Volume 7 (2nd) April 14, 1937, page 206 Northeastern Reporter advance sheets.) A petition for rehearing was filed, brief submitted, and the petition for rehearing was denied on June 4, 1937 and the opinion of the Supreme Court of Indiana was certified back to the State Court of Indiana and spread of record. A writ of possession was then issued and the Sheriff of Jay County, Circuit Court, served same upon Walter C. Wright and James M. Wright.

(5) The Appellant contends in his petition for a restraining order that the decisions of the United States District Court for the Northern District of Indiana and the State Supreme Court of Indiana were based on the theory that said subsection (s) of the amendment to the Bankruptcy Act, being the so-called Frazier-Lemke Farm Act, was unconstitutional and that the State Supreme Court did not have before it the last decision of the United States Supreme Court concerning subsection (s) of the so-called Frazier-Lemke Farm Act.

[fol. 38] The Appellant is in error in this statement. The opinion of the Supreme Court of Indiana shows that this question and the last decision of the United States Supreme Court was raised by the Appellant and fully and definitely passed upon. The State Supreme Court of Indiana held that after issuance of the certificate of sale to the mortgagee, the Appellee in this case, who purchased the farm in question at the foreclosure sale, obtained good title of the said property subject only to right to redeem on the part of the owner of the Equity. Thereafter, the conveyance of the interests of the mortgagor, the Appellant in this case, after the issuance of the certificate of sale, conveyed to the mortgagee, the Appellee in this case, the last remaining rights of the Appellant, which was the right to redeem, which right expired one year after the date of sale.

(6) The State Supreme Court also affirmed the finding that the mortgagor was not the owner of the real estate in question at the time of the filing of his petition in bankruptcy and inasmuch as the grantor in the deed conveying the right to redeem was the mortgagor, to-wit, the Appellee in this case, and had also divested himself of his right to redeem, the petition in bankruptcy did not bring the real estate within the provisions of the so-called Frazier-Lemke Act.

(7) The United States District Court for the Northern District of Indiana after reviewing the finding of the conciliation Referee who received the evidence from the parties, confirmed the finding of said Referee and struck the real estate in question from the bankruptcy schedule by reason of the fact that at the time of the filing of the bankruptcy petition title to the real estate in question was not in the Bankrupt. We must repeat that prior to the foreclosure proceedings and long prior to the time when the [fol. 39] bankruptcy petition involved in the instant appeal was filed, the Bankrupt and his wife had deeded the farm in question to their son. This deed was recorded and Walter C. Wright and not the Bankrupt was the owner of this real estate at the time the Bankruptcy petition involved in these proceedings was filed. After the Honorable Judge Slick of the United States District Court for the Northern District of Indiana had sustained the finding of the conciliation Referee, who found that title to the real estate was not in the Bankrupt and therefore ordered said real estate in question stricken from the Bankruptcy petition, Walter C. Wright and wife deeded the real estate in question back to the Bankrupt. Thereafter, a motion was made by the Appellant to amend his bankruptcy petition to include this real estate, which motion was denied.

(8) The questions involved in these consolidated appeals affect the matter only of title. We believe also that the question of good faith presents itself. In the ejectment proceedings brought into State Court after the Appellee had acquired the Master's Certificate of Sale and after the owners of the equity of redemption had conveyed their remaining interest, which interest was only the right to redeem, and after the title to the property in question became absolute in the Appellee, did the Appellee file its ejectment proceedings in the State Court of Jay County.

We regret to repeat, but in order to stress these facts we say again that that issue of the right to the possession of the property was carried to the Appellate and State Supreme Court of Indiana.

We respectfully submit that the issue of ejectment which was fully adjudicated is not the same as the issue involved in these proceedings and hence there is no conflict in the [fols. 40-41] jurisdiction between this Court and the State Supreme Court of Indiana. The execution of the judgment of the State Supreme Court of Indiana should not be disturbed. This Court will determine the question as to whether Judge Slick of the United States District Court for the Northern District of Indiana was in error in finding that the Bankrupt did not have such title to and in the property in question as to entitle him to schedule same in his Bankruptcy Petition.

We therefore respectfully submit that the motion and petition of the Appellant to restrain the Appellee and the Sheriff of Jay County, Indiana from executing the judgment of the State Court of Indiana and removing the Bankrupt and his tenant from the real estate in question should be denied and the temporary restraining order heretofore entered by this Court be dissolved.

Respectfully submitted, Roscoe D. Wheat, Arthur P. Feigen, Albert J. Feigen, Attorneys for Appellee.

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[fols. 42-43] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—June 25, 1937

Now this day come the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. Samuel E. Cook, counsel for appellant, and by Messrs. Roscoe D. Wheat and Arthur P. Feigen, counsel for appellee, and the Court having heard the same, takes this matter under advisement.

[fol. 44] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936, APRIL SESSION, 1937

Nos. 6183 and 6184

In the Matter of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT, Appellant,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY, Appellee

Appeals from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

Before Sparks, Major and Alschuler, Circuit Judges

OPINION—July 3, 1937

SPARKS, Circuit Judge:

These appeals involve bankruptcy proceedings under Section 75 of the Bankruptcy Act in which appellant was the debtor. The first appeal is from an order of the District Court, on December 14, 1936, overruling the debtor's petition to review the decision and recommendations of the Conciliation Commissioner and approving the latter's recommendation that certain real estate listed as assets be stricken from the debtor's schedules. The second appeal is from an order of the court, on December 31, 1936, denying the debtor's application for permission to amend his schedules by reinstating as assets therein, the real estate theretofore stricken in Cause No. 6183.

The questions presented in both cases are practically the same and they arise out of the following facts: On October 1, 1925, the debtor was the owner of 200 acres of land in Jay County, Indiana. On that date he with his wife, Emma G., executed a mortgage upon this land to appellee to secure the [fol. 45] payment of a note in the sum of $9000. On the same day the debtor was the owner of an additional tract of land in the same county containing 80.31 acres, upon which appellee held a mortgage lien to secure the payment of a note for $3000 executed by the debtor and his wife on October 1, 1925. These two tracts adjoined, constituting one farm.

On October 14, 1931, the debtor and his wife executed and delivered three separate warranty deeds to their two children and son-in-law for certain portions of the farm; that is to say,—to their son, Walter C. Wright, they deeded the 80.31 acre tract; to their daughter, Edna E. Coon, and her husband John E. Coon, they deeded separate 40 acre tracts, one to each, out of the 200 acre tract. On the same day the debtor also executed and delivered to his wife a separate warranty deed for a third 40 acre tract out of the 200 acres. The consideration named in each deed was one dollar and other consideration, the receipt of which was acknowledged. The deed to Walter C. Wright was made subject to appellee's mortgage thereon for $3000; and the deeds to Edna E. Coon, her husband and her mother, were made subject respectively to a mortgage indebtedness of $2500, $1500 and $1400 of the $9000 mortgage indebtedness to appellee; however, there was no express assumption of such indebtedness by any of the grantees. The deeds of the children and son-in-law were duly recorded on the day they were executed, and the one to the debtor's wife was duly recorded on February 25, 1932.

On January 3, 1934, appellee instituted an action in the Jay Circuit Court of Indiana, against the debtor and Walter C. Wright to foreclose the $3000 mortgage on the 80.31 acre tract. The debtor's wife was not joined in the action because in the meantime she had died. On June 9, 1934, a decree of foreclosure and order of sale was entered. On July 12, 1934, pursuant to the decree, the sheriff sold this tract to appellee and issued to it his certificate of sale therefor; and upon the expiration of the year of redemption, pursuant to the Indiana Statutes, the sheriff of Jay County issued his sheriff's deed therefor to appellee on August 2, 1935.

Prior to October 30, 1934, appellee filed its complaint in the Jay Circuit Court of Indiana, for personal judgment against James M. Wright, and for foreclosure of the $9000 mortgage, against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright, and the Citizens Bank of Portland, Indiana. That cause was venued from Jay County to Adams County, Indiana, and [fol. 46] while it was pending on October 30, 1934, the debtor filed his petition in bankruptcy, under the Frazier-Lemke Act, in which he filed under oath a schedule of his

property including therein the real estate which he had conveyed on October 14, 1931, to his wife and children and his son-in-law, amounting to 200.31 acres.

On April 13, 1935, Walter C. Wright, Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered to the debtor a quit-claim deed for the real estate which he had deeded to them, and to his wife who was then deceased.

On May 27, 1935, appellee recovered a personal judgment against the debtor in the Adams Circuit Court for $11,975.11 and a decree of foreclosure of its $9000 mortgage which covered the 200 acre tract, 120 acres of which had been conveyed by three of the four deeds hereinbefore referred to. Pursuant to that decree, on July 20, 1935, the Sheriff of Jay County, in compliance with the applicable laws of Indiana, sold the fee simple of that real estate to appellee for $12,174.31, that being the highest and best bid received, and executed and delivered to it a certificate of sale. No one having redeemed the property within the year of redemption, the Sheriff of Jay County, upon presentation of the certificate by appellee on July 20, 1936, executed and delivered his sheriff's deed to appellee for the 200 acres described in the certificate.

On September 13, 1935, appellee instituted an action in the Jay Circuit Court, against Walter C. Wright and his wife Virgie M. Wright, for possession of the 80.31 acres. The debtor by leave of court was admitted as a party defendant, and answered that he had been duly declared a bankrupt in the Federal Court and that the State Court, for that reason, was without jurisdiction. Judgment for possession and damages went for appellee, whereupon appellants appealed to the Supreme Court of Indiana, and the judgment was affirmed April 2, 1937. See Wright, et al. v. Union Central Life Insurance Co., 7 N. E. (2d) 206. On October 11, 1935, the debtor filed an amended petition in bankruptcy under the provisions of Section 75 (s) as amended August 28, 1935.

Both records in the appeals to this court were filed February 20, 1937. The cases were consolidated for hearing, and on June 3, 1937, appellee filed its motion and petition to dismiss the consolidated appeals. On June 11, 1937, appellant filed his verified petition for a temporary order

without notice, restraining appellee, until notice could be [fol. 47] given, and for a permanent order upon hearing, from enforcing the judgment which the Indiana Supreme Court had affirmed, for possession of the 80.31 acre tract. This court issued the order and continued it until June 25, and notified both parties that both appeals would be heard on their merits at that time, and that also all pending petitions and motions would be then heard.

On June 14, 1937, appellant filed his second paragraph of petition for a restraining order, and the merits and motions were submitted and presented on the appointed day.

All questions here presented by appellant are based upon subsection (s) of Section 75, as amended by the new Frazier-Lemke Act, August 28, 1935, 11 U. S. C. A. section 203 (s).

Aside from this enactment it is obvious that the debtor had no interest in 200.31 of the 280.31 acres of the mortgaged property at the time he filed his original bankruptcy petition on October 30, 1934, for he had deeded it to his wife, children and son-in-law more than three years before, and he did not again receive a deed for it until six months thereafter, which was nine months after the sheriff had sold the 80.31 acre tract, and within a very short time prior to the sale of the 200 acre tract under the foreclosure decree. At the time the debtor filed his amended petition for relief under the amended Act of August 28, 1935, appellee had received a deed from the sheriff for the 80.31 acre tract on August 2, 1935, and he held a sheriff's certificate of sale for the 200 acre tract, and under the Indiana law would have been entitled to a deed therefor on July 20, 1936, if there were no redemption. Hence, at the time of the enactment on August 28, 1935, the only interest that debtor had in the mortgaged property was a right to redeem the 200 acre tract, provided he did so on or before July 20, 1936. Indeed, that was all the interest he had when he filed his amended petition on October 11, 1935, unless the amendment of August 28, 1935, operated to extend his right of redemption.

It is contended by appellant that the amendment did so operate, not only to extend the time for redemption of the 200 acre tract, but also to void the deed for the 80.31 acre tract, and to extend the time for redemption of it.

In Lafeyette Life Insurance Company v. Lowmon, 79 F. (2d) 887, we held that Congress had no power to extend the time for the redemption of land sold under execution, after that time had begun to run, that is to say after the sheriff's

[fol. 48] sale. That case did not involve the right of Congress, under its bankruptcy powers, to defer the foreclosure of a mortgage, or even a sale after a foreclosure, and those questions were not decided in that case. There the sale had been had and we thought, under the laws of Indiana, which are rules of property in that State, that at the time Lowmon filed her petition in bankruptcy under Section 75, the only interest she had in the property was her right to redeem. We did not question the right of the Bankruptcy Court to administer upon that right of redemption, but we thought that the Bankruptcy Court had no right, and that Congress had no power to bestow upon it such right, to enlarge the debtor's estate, which had been limited by the foreclosure and sale in compliance with the laws of Indiana. Certiorari was not sought in that case.

Confusion has arisen in this Circuit, however, with respect to the extent of the decision of the Supreme Court in Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, announced March 29, 1937. It is contended by appellant that that case, in effect, overruled the Lowmon case and sustained subsection (s) of Section 75 as to all of its provisions. We disclaim any intention of not strictly following the rulings of the Supreme Court, but we can not accept appellant's interpretation of the extent of that decision. We do not understand that the question in the Lowmon case was before the Supreme Court in the Wright case. In the latter case there had been no sale and the period of redemption had not begun. In the Lowmon case there had been a sale and the period of redemption was running, in fact it expired two weeks after the petition was filed. Appellant's contention is based first upon the first paragraph of the Wright decision in which the Lowmon case is referred to. After stating that the question for decision was whether Section 75, subsection (s) as amended, was constitutional the Court said: "In this case, the federal court for western Virginia (see In re Sherman, 12 Fed. Supp. 297) and the Circuit Court of Appeals for the Fourth Circuit (85 F. (2d) 973) held it invalid. Like decisions have been rendered in other circuits. Lafayette Life Insurance Co. v. Lowmon, 79 F. (2d) 887 (Seventh Circuit); United States National Bank of Omaha v. Pamp, 83 F. (2d) 493 (Eighth Circuit). In the Fifth Circuit the legislation was sustained. Dallas Joint Stock Land Bank v. Davis, 83 F. (2d) 322. Because of this conflict and the importance of the question, we

granted certiorari." In no other part of the opinion are these cases referred to.

[fol. 49] We interpret this paragraph as being merely a basis for granting certiorari. It is true that we suffer considerable embarrassment from the fact that in the Wright case the court refers to the Lowmon case as being a decision like unto those of the Circuit Courts of Appeals in the Fourth and Eighth Circuits, and the District Court of the Fourth Circuit, and contrary to the one in the Fifth Circuit. We had thought that the question decided in the Lowmon case was not the same as that decided in the other cases referred to. In the Lowmon case the sale had been made and the period of redemption was running. In all other cases cited, and in the Wright case, the sales had not been made and they were still dealing with remedies for the protection of the title to property against foreclosure or sale, while that title was yet in the debtor. There was a sale in the Pamp case, but it had not been confirmed, and from the opinion we assume that was required under the laws of Nebraska. Under the Indiana laws, however, no confirmation by the court of a sheriff's sale or deed for land sold under execution is required. In the Lowmon case and in this case the court was not dealing with remedies against foreclosure and sale, but with property rights which came into existence when the sales were made by virtue of the laws of Indiana. The notes and mortgages were not in existence; they were merged into the decree of foreclosure and were cancelled.

In the Lowmon case we particularly discussed subsection (n) of Section 75, and held it unconstitutional to the extent that it authorized an extension of the period of redemption. We also referred to the first sentence in subsection (s) (2) of Section 75 which in effect commands the court to carry out that authorization by extending the time of redemption for a period of three years, and we held that portion of it unconstitutional. In this sense our decision was like those referred to in the Fourth and Eighth Circuits, and unlike the one in the Fifth Circuit, for we held a portion of subsection (s) unconstitutional. The Supreme Court in the Wright case did not say, unless by remote inference, that the facts in all the cases referred to were analogous, or that the questions presented were the same. Indeed they were not the same.

We base these conclusions upon the ruling in Chicago Board of Trade v. Johnson, 264 U. S. 1, where the court said: "* * * where the bankrupt law deals with property rights which are regulated by the state law, the federal courts in bankruptcy will follow the state courts * * *" and [fol. 50] and also upon Home Bldg. and Loan Assn. v. Blaisdell, 290 U. S. 398, where it was said: "* * * Although the courts would have no authority to alter a statutory period of redemption, the (Minnesota) legislation in question permits the courts to extend that period, within limits and upon equitable terms * * *" True, these decisions were prior to the enactment of amended subsections (n) and (s) of Section 75, but we think that makes no difference. If the extension of the time of redemption must be considered as a remedial right instead of a fixed property right, then the bankruptcy court under its broad equitable powers would perhaps have the inherent power to extend the time without permissive Federal legislation. In the Blaisdell case it was said that the courts had no authority to alter a statutory period of redemption, and the court based its decision on the permissive amendment of the Minnesota legislation. Hence we concluded that the right to extend the time of redemption was not considered of a remedial character, but was regarded as a property right to be governed by the state law under the ruling of the Board of Trade case, supra.

These late expressions of the Supreme Court lead us to believe that it did not intend to declare a different doctrine in the Wright case, especially since that question was not then before it. The question presented is of such importance that we feel it our duty to adhere to the ruling in the Lowman case unless and until the Supreme Court shall hereafter hold to the contrary upon that issue.

It seems to us that if Congress has the power under the constitution to prolong or in any way limit the time of redemption as fixed by the laws of Indiana, for the purpose of increasing the estate of the debtor, or increasing his rights in property to which he has no title, or for any other purpose, then it would have the same right for the same purpose to alter the laws of descent of that state, or to permit federal construction of her transfer statutes contrary to the views of her own courts. We have never thought that such power was contemplated by the federal constitution, even under its broadest construction.

Appellant urges that the effect of the decision in the Wright case upholds each and every provision of subsection (s). We think it upholds only those portions which were pertinent to the questions raised in that case, which did not include the right of the bankruptcy court to extend the time for redemption after that period had begun to run. [fols. 51-52] From what has been said we overrule appellee's petition to dismiss the consolidated appeals, and the restraining order is dissolved. There was no error in striking from appellant's schedule of assets the real estate here involved in cause No. 6183, nor was there error in denying appellant's motion to reinstate that real estate in his schedule of assets in cause No. 6184.

Decrees
Affirmed.

A true Copy. Teste:
——, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

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[fol. 53] In United States Circuit Court of Appeals

6183

In the Matter of James M. Wright, Debtor

James M. Wright

vs.

Union Central Life Insurance Company

Appeal from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

Judgment—July 3, 1937

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from, be, and the same is hereby affirmed with costs.

It is further ordered that the petition to dismiss this appeal be, and the same is hereby denied, and that the

restraining order heretofore entered in this cause be, and the same is hereby dissolved.

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IN UNITED STATES CIRCUIT COURT OF APPEALS

6184

In the Matter of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

Appeal from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

JUDGMENT—July 3, 1937

[fol. 54] This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from, be, and the same is hereby affirmed with costs.

It is further ordered that the petition to dismiss this appeal be, and the same is hereby denied, and that the restraining order heretofore entered in this caus be, and the same is hereby dissolved.

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[fols. 55-75] Petition for rehearing covering 14 pages, filed July 22, 1937, omitted from this print. It was denied, and nothing more by order of September 20, 1937.

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[fol. 76] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—September 20, 1937

It is ordered by the Court that the petition of appellant for oral argument on the petition for rehearing in this cause, be, and it is hereby denied.

It is further ordered that the petition for rehearing be, and the same is hereby denied.

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[fols. 77-79] In United States Circuit Court of Appeals

[Title omitted]

Order Staying Mandates—September 28, 1937

Now this day comes counsel for appellant and presents a motion for stay of the Mandates of this Court pending a petition to the Supreme Court of the United States for a Writ of Certiorari.

On Consideration Whereof: It is now here ordered that the Mandates in these causes be, and the same are hereby stayed until the further order of this Court.

It is further ordered that counsel for appellant proceed with diligence and promptly file petition for a Writ of Certiorari in the Supreme Court of the United States, and forthwith file in this Court proof of the filing of said petition in said Court.

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[fol. 79a] In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 6183-4 Consolidated

[Title omitted]

Notice as to Transcript in Cause No. 6183

To Feigen and Feigen, Counsel for Appellee in Said Cause:

Please take notice that on the 22 day of November, 1937, the Appellant filed in the Office of the Clerk of said Circuit Court of Appeals a petition for an order of said Court to certify and transmit the original typewritten transcript in No. 6183 to the Clerk of the Supreme Court to be printed as part of the record in said Cause.

That Appellant will ask said Court to hear said petition on the 29 day of November, 1937, or as soon thereafter as is convenient for said Court.

Dated this 22nd day of November, 1937.

Samuel E. Cook, Counsel for Appellant.

[fol. 80] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 6183-6184

[Title omitted]

NOTICE OF PRÆCIPE FOR RECORD

To Arthur P. Feigen and Albert J. Feigen, 111 W. Washington Street, Chicago, Illinois, Counsel for the Appellee, Union Central Life Insurance Company, Appellee, in Said Cause:

Please take Notice that on the 22 day of November, 1937, the Appellant in the above Cause filed with the Clerk of said Circuit Court of Appeals a præcipe for the record to be certified and transmitted to the Clerk of the Supreme Court of the United States on the petition for a Writ of Certiorari to said Court of Appeals in said Cause.

Dated this 22 day of November, 1937.

Samuel E. Cook, Counsel for Appellant.

[fol. 81] STATE OF INDIANA,
County of Huntington, ss:

Proof of Service of Notice

Samuel E. Cook, being duly sworn on his oath, says: That he is Counsel for the Appellant in the above Cause and that on the 20 day of November, 1937, he mailed 1 copy of the above notice of the filing of said præcipe and 3 copies of said præcipe to Arthur P. Feigen and Albert J. Feigen, 111 E. Washington Street, Chicago, Illinois, Counsel of record for Appellee in said Cause by depositing it in the United States Post Office in the City of Huntington, Indiana, with the required postage thereon.

Samuel E. Cook.

Subscribed and sworn to before me this 20 day of November, 1937. Homer E. Bailey, Notary Public. My Commission expires May 29, 1938. (Seal.)

[fol. 82] Original

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 6183-6184

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed November 23, 1937

Appeal to the Supreme Court of the United States from the Decree and Judgment of the United States Circuit Court of Appeals for the Seventh Circuit, by Petition for Writ of Certiorari

To Frederick G. Campbell, Esquire, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Please make out, certify and transmit to the Clerk of the Supreme Court of the United States the following portions of the record and proceedings in said Court to be incorporated into the transcript of the record *of* be used on said appeal, and petition for said writ to-wit:

1. One copy of the printed transcript of the record of the proceedings of the District Court, in said cause of James M. Wright Debtor vs. Union Central Life Insurance Company No. 6184.

2. Ten uncertified copies of said printed record in said cause.

3. The original type-written transcript of the proceedings of the District Court in Cause No. 6183 as ordered by said Circuit Court.

4. And attach to said printed transcript a certified manu- [fols. 83-85] script copy of the proceedings in the United States Circuit Court of Appeals of said Circuit, namely:

(1) The order docketing the transcripts in No-. 6183 and 6184 as causes in said Circuit Court of Appeals.

(2) The order consolidating No. 6183 and No. 6184 in said Court.

(3) The order of submission of said Causes in said Court.

(4) The opinion of the Court in said Causes.

(5) The final order and decree of the Court in said Causes.

(6) The Appellant's petition for a rehearing in said Causes (in full) and the order of the Court denying said petition.

(7) The order of the Court staying the mandate in said Causes.

5. Also certify that in the papers, briefs and proceedings in said Causes No-. 6183 and 6184, it appears that Samuel E. Cook of Huntington, Indiana, appeared as Counsel for said Appellant, James M. Wright, and that Arthur P. Feigen and Albert J. Feigen, of Chicago, Illinois, and Roscoe D. Wheat of Portland, Indiana, appeared as Counsel for the Appellee, Union Central Life Insurance Company.

6. A copy of this præcipe.

7. Add (1) the certificate of said Clerk to said printed transcript of the record in No. 6184. (2). A certificate to said manuscript copy of the proceedings in said Circuit Court in said Causes and (3) A certificate to said original typewritten transcript in said Cause No. 6183.

To be used as the basis for a petition to the Supreme Court of the United States for a Writ of Certiorari to said Circuit Court of Appeals in said Causes.

Respectfully submitted, Samuel E. Cook, Counsel for Appellant.

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[fol. 86] In United States Circuit Court of Appeals for the Seventh Circuit.

No. 6183-6184

[Title omitted]

ADDITIONAL PRÆCIPE FOR TRANSCRIPT OF RECORD, REQUESTED BY APPELLEE—Filed November 30, 1937

To Frederick G. Campbell, Esquire, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Please include in the transcript of record the following additional portions of the record and proceedings in this

Court, to be used on the petition for Writ of Certiorari, to-wit:

1. Appellant's petition to restrain the appellee and the Sheriff of Jay County, Indiana, from executing the judgment of the State Court and from removing the appellant and his tenant from that portion of the real estate described in the appellant's petition.

[fols. 87-88] 2. Additional second paragraph of said petition, filed by the appellant in connection with said motion.

3. Appellee's objections to appellant's petition to restrain the appellee and the Sheriff of Jay County, Indiana, from executing the judgment of the State Court and motion of the appellee to dissolve the temporary restraining order heretofore entered by the United States Circuit Court of Appeals, for the Seventh Circuit, without notice to the appellee.

4. Petition of appellant to print transcript only in cause #6184.

5. Objections of appellee to the printing of transcript only in cause #6184.

6. Court ruling on said petition and objections thereto.

7. Petition and motion of appellee for leave to refer to the Transcript of Record in cause #6183 in its Brief and Argument and also to direct the Clerk to print this Petition and Court's order with reference thereto, and to attach same to the printed Transcript of Record in cause #6184.

8. Court's order on said Petition and Motion.

Respectfully submitted, Arthur P. Feigen, Albert J. Feigen, Roscoe D. Wheat, Counsel for Appellee.

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[fol. 89] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CLERK'S CERTIFICATE

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby

certify that the foregoing typewritten pages, numbered from 1 to 88 inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the Appellant's Præcipe, filed on the twenty-third day of November, 1937, and the Appellee's Præcipe, filed on the thirtieth day of November, 1937, excepting as to the following items in Appellant's Præcipe:

Item 1.—The printed record called for is not included in the foregoing proceedings, but is certified herewith under a separate Certificate.

Item 2—Ten Copies of the printed record are not included in the foregoing proceedings, but said copies have been furnished counsel for appellant.

Item 3—The typewritten transcript of the record in cause No. 6183 as certified to by the Clerk of the District Court, is not included in the foregoing proceedings, as it is certified herewith under a separate Certificate and is being transmitted to the Supreme Court pursuant to an order of this Court.

Item 4—Sec. 1—There is no order of record that causes Number- 6183 and 6184 be docketed in this Court. A recital of the docketing of these causes is contained in the foregoing proceedings.

Item 5—Samuel E. Cook filed no formal appearance in these causes but he is the attorney who represented the appellant in this Court throughout all of the proceedings. Arthur P. Feigen, Albert J. Feigen and Roscoe D. Wheat, entered appearances as counsel for appellee on Feb. 27, 1937, and represented the appellee in this Court throughout all the proceedings:

In the Matter of: James M. Wright, Debtor, 6183, James M. Wright, Appellant, vs. Union Central Life Insurance Company, Appellee, in the cases of: 6184, James M. Wright vs. Union Central Life Insurance Company, October Term, 1937, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof: I hereunto subscribe my name and affix the seal of said United States Circuit Court of

Appeals for the Seventh Circuit, at the City of Chicago, this eighth day of December, 1937.

Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal United States Circuit Court of Appeals, Seventh Circuit.)

[fol. 90] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR A WRIT OF CERTIORARI

On consideration of the motion of counsel for petitioner in the above entitled cause, and good cause therefor having been shown,

It Is Ordered that the time within which petition for a writ of certiorari may be filed herein be, and the same is hereby, extended for a period of 30 days from December 20, 1937.

Charles E. Hughes, Chief Justice of the United States.
Dated this 14th day of December, 1937.

[fol. 91] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 715

ORDER ALLOWING CERTIORARI—Filed February 28, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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[fol. 92] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 716

ORDER ALLOWING CERTIORARI—Filed February 28, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.